

1 UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF OHIO
3 EASTERN DIVISION

4 IN RE: NATIONAL)
5 PRESCRIPTION) MDL No. 2804
6 OPIATE LITIGATION)
7) Case No.
8) 1:17-MD-2804
9)
10 THIS DOCUMENT RELATES) Hon. Dan A.
11 TO ALL CASES) Polster
12)

13 THURSDAY, JULY 11, 2019

14 HIGHLY CONFIDENTIAL - SUBJECT TO FURTHER
15 CONFIDENTIALITY REVIEW

16 - - -

17 Videotaped deposition of Michael
18 Mapes, held at the offices of The Mining
19 Exchange, A Wyndham Grand Hotel & Spa,
20 8 South Nevada Avenue, Colorado Springs,
21 Colorado, commencing at 9:41 a.m., on the
22 above date, before Carrie A. Campbell,
23 Registered Diplomat Reporter and Certified
24 Realtime Reporter.

25 - - -

GOLKOW LITIGATION SERVICES
877.370.3377 ph | 917.591.5672 fax
deps@golkow.com

1 A P P E A R A N C E S :
2

LANIER LAW FIRM, P.C.

3 BY: W. MARK LANIER

wml@lanierlawfirm.com

4 RACHEL LANIER

rachel.lanier@lanierlawfirm.com

5 ROBERT LEONE

robert.leone@lanierlawfirm.com

6 10940 W. Sam Houston Parkway N., Suite 100

Houston, Texas 77064

7 (713) 659-5200
8

9 GREENE, KETCHUM, FARRELL, BAILEY

& TWEEL LLP

10 BY: PAUL T. FARRELL, JR.

paul@greeneketchum.com

11 419 Eleventh Street

Huntington, West Virginia 25701

12 (314) 525-9115
13

14 MCHUGH FULLER LAW GROUP

BY: MICHAEL J. FULLER, JR.

15 mike@mchughfuller.com

AJ ELKINS

16 aj@mchughfuller.com

(VIA REALTIME STREAM)

17 97 Elias Whiddon Road

Hattiesburg, Mississippi 39402

18 (601) 261-2220
19

20 SIMMONS HANLY CONROY LLC

BY: LAURA L. FITZPATRICK

21 lfitzpatrick@simmonsfirm.com

112 Madison Avenue

22 New York, New York 10016-7416

(212) 784-6400
23
24
25

1 BARON & BUDD, P.C.
2 BY: MARK PIFKO
3 mpifko@baronbudd.com
4 JAY LICHTER
5 jlichter@baronbudd.com
6 (VIA REALTIME STREAM)
7 STERLING CLUFF
8 scluff@baronbudd.com
9 (VIA REALTIME STREAM)
10 15910 Ventura Boulevard, Suite 1600
11 Encino, California 91436
12 (818) 839-2333
13 Counsel for Plaintiffs
14
15 NAPOLI SHKOLNIK, PLLC
16 BY: HUNTER SHKOLNIK
17 hunter@napolilaw.com
18 (VIA TELECONFERENCE)
19 SHAYNA SACKS
20 ssacks@napolilaw.com
21 (VIA REALTIME STREAM)
22 360 Lexington Avenue, 11th Floor
23 New York, New York 10017
24 (212) 397-1000
25 Counsel for Cuyahoga County

26 US DEPARTMENT OF JUSTICE
27 BY: JAMES R. BENNETT, II
28 james.bennett4@usdoj.gov
29 RENÉE BACCHUS
30 renee.bacchus@usdoj.gov
31 United States Courthouse
32 801 West Superior Avenue, Suite 400
33 Cleveland, Ohio 44113
34 (216) 622-3988
35 and
36 US DEPARTMENT OF JUSTICE
37 BY: MARIAMA C. SPEARS
38 mariama.c.spears@usdoj.gov
39 8701 Morrisette Drive
40 Springfield, Virginia 22152
41 (202) 598-6204
42 Representing the US DOJ and the Witness

1 REED SMITH LLP
2 BY: SHANNON MCCLURE
3 smcclure@reedsmith.com
4 ABIGAIL PIERCE
5 abigail.pierce@reedsmith.com
6 1717 Arch Street, Suite 3100
7 Philadelphia, Pennsylvania 19103
8 (215) 851-8100
9 Counsel for AmerisourceBergen

10 WILLIAMS & CONNOLLY LLP
11 BY: JENNIFER G. WICHT
12 jwicht@wc.com
13 BRAD MASTERS
14 bmasters@wc.com
15 725 Twelfth Street, N.W.
16 Washington, DC 20005
17 (202) 434-5331
18 Counsel for Cardinal Health, Inc.

19 COVINGTON & BURLING LLP
20 BY: CHRISTOPHER K. EPPICH
21 ceppich@cov.com
22 1999 Avenue of the Stars
23 Los Angeles, California 90067
24 (424) 332-4764

25 and

BY: MEGHAN E. MONAGHAN
mmonaghan@cov.com
850 Tenth Street, NW
Washington, DC 20001-4956
(202) 662-6000
Counsel for McKesson Corporation
JONES DAY
BY: NEAL J. STEPHENS
nstephens@jonesday.com
PATRICK BEISELL
1755 Embarcadero Road
Palo Alto, California 94303
(650) 739-3939
Counsel for Walmart

1 KIRKLAND & ELLIS, LLP
BY: JENNIFER LEVY
2 jennifer.levy@kirkland.com
CATIE VENTURA
3 catie.ventura@kirkland.com
1301 Pennsylvania Avenue, N.W.
4 Washington, DC 20004
(202) 879-5000
5 Counsel for Allergan Finance, LLC
6
7

BARTLIT BECK LLP
8 BY: KATHERINE SWIFT
kswift@bartlit-beck.com
9 (VIA REALTIME STREAM)
54 West Hubbard Street, Suite 300
10 Chicago, Illinois 60654
(312) 494-4400
11 Counsel for Walgreens
12

13 DECHERT LLP
BY: ERIK W. SNAPP
14 erik.snapp@dechert.com
35 West Wacker Drive, Suite 3400
15 Chicago, Illinois 60601
(312) 646-5800
16 Counsel for Purdue Pharma
17

18 ROPES & GRAY, LLP
BY: WILLIAM DAVISON
19 william.davison@ropesgray.com
800 Boylston Street
20 Boston, Massachusetts 02199-3600
(617) 951-7000
21 Counsel for Mallinckrodt & SpecGx
22
23
24
25

1 BARNES & THORNBURG LLP
BY: WILLIAM A. HAHN, II
2 william.hahn@btlaw.com
11 South Meridian Street
3 Indianapolis, Indiana 46204-3535
(317) 236-1313
4 Counsel for HD Smith
5

6 MORGAN, LEWIS & BOCKIUS LLP
BY: JOHN P. LAVELLE, JR.
7 john.lavelle@morganlewis.com
1701 Market Street
8 Philadelphia, Pennsylvania 19103-2921
(215) 963-5000
9 Counsel for Rite Aid
10

11 LOCKE LORD LLP
BY: BRANDAN MONTMINY
12 brandan.montminy@lockelord.com
2200 Ross Avenue, Suite 2800
13 Dallas, Texas 75201
(214) 740-8445
14 Counsel for Henry Schein, Inc., and
Henry Schein Medical Systems, Inc.
15
16

ZUCKERMAN SPAEDER LLP
17 BY: ANTHONY M. RUIZ
aruiz@zuckerman.com
18 (VIA TELECONFERENCE AND STREAM)
1800 M Street NW, Suite 1000
19 Washington, DC 20036-5807
(202) 778-1800
20 Counsel for CVS Indiana, LLC, and
CVS RX Services, Inc.
21
22
23
24
25

1 O'MELVENY & MYERS LLP
BY: RYAN SYNDER
2 rsnyder@omm.com
(VIA TELECONFERENCE AND STREAM)
3 AMY LUCAS
alucas@omm.com
4 (VIA REALTIME STREAM)
SETH BAGLIN
5 sbaglin@omm.com
(VIA REALTIME STREAM)
6 1999 Avenue of the Stars, 8th Floor
Los Angeles, California 90067
7 (213) 430-6326
8 and
9 TUCKER ELLIS LLP
BY: JEFFREY C. SINDELAR, JR.
10 jeffrey.sindelar@tuckerellis.com
(VIA TELECONFERENCE)
11 950 Main Avenue, Suite 1100
Cleveland, Ohio 44113-7213
12 (216) 696-3697
Counsel for Janssen and Johnson &
13 Johnson
14
15 MORGAN, LEWIS & BOCKIUS LLP
BY: MAUREEN K. BARBER
16 valerie.toth@morganlewis.com
(VIA TELECONFERENCE AND STREAM)
17 One Oxford Centre, 32nd Floor
Pittsburgh, Pennsylvania 15219-6401
18 (412) 560-3300
Counsel for Teva Pharmaceuticals
19 USA, Inc., Cephalon, Inc., Watson
Laboratories, Inc., Actavis LLC,
20 Actavis Pharma, Inc., f/k/a Watson
Pharma, Inc.
21
22
23
24
25

1 MARCUS & SHAPIRA LLP
2 BY: JOSHUA A. KOBRIN
3 kobrin@Marcus-Shapira.com
4 (VIA TELECONFERENCE AND STREAM)
5 301 Grant Street, 35th Floor
6 Pittsburgh, Pennsylvania 15219-6401
7 (412) 338-4690
8 Counsel for HBC

9 FOX ROTHSCHILD LLP
10 BY: ZACHARY MARTIN
11 Zmartin@foxrothschild.com
12 (VIA TELECONFERENCE)
13 2700 Kelly Road, Suite 300
14 Warrington, Pennsylvania 18976-3624
15 (215) 345-7500
16 Counsel for Prescription Supply, Inc.

17 CAVITCH FAMILO & DURKIN, CO., L.P.A.
18 BY: ERIC J. WEISS
19 eweiss@cavitch.com
20 (VIA TELECONFERENCE)
21 1300 East 9th Street
22 Cleveland, Ohio 44114
23 (216) 621-7860
24 Counsel for Discount Drug Mart

25 FLAHERTY SENSABAUGH BONASSO PLLC
26 BY: JACK SMITH
27 jsmith@flahertylegal.com
28 (VIA TELECONFERENCE AND STREAM)
29 200 Capitol Street
30 Charleston, West Virginia 25338
31 (304) 345-0200
32 Counsel for Masters Pharmaceutical

1 FOLEY & LARDNER LLP
2 BY: KATY E. KOSKI
3 kkoski@foley.com
4 (VIA REALTIME STREAM)
5 111 Huntington Avenue, Suite 2500
6 Boston, Massachusetts 02199-7610
7 (617) 342-4000
8 Counsel for Anda

9 BAILEY WYANT PLLC
10 BY: JUSTIN TAYLOR
11 jttaylor@baileywyant.com
12 (VIA REALTIME STREAM)
13 500 Virginia Street East, Suite 600
14 Charleston, West Virginia 25301
15 (304) 345-4222
16 Counsel for West Virginia Board of
17 Pharmacy

18 ALSO PRESENT:

19 SPECIAL MASTER DAVID R. COHEN
20 david@specialmaster.law
21 24400 Chagrin Boulevard, Suite 300
22 Cleveland, Ohio 44122
23 (216) 831-0001

24 Juan Wilson, Lanier Law Firm
25 Georgia Macy, Lanier Law Firm

VIDEOGRAPHER:

DAN LAWLOR,
Golkow Litigation Services

- - -

1	INDEX		
2			PAGE
3	APPEARANCES.....		2
4	EXAMINATIONS		
5	BY MS. MCCLURE.....		17
6	BY MS. WICHT.....		191
7	BY MR. EPPICH.....		207
8	BY MR. STEPHENS.....		233
9			
10	EXHIBITS		
11	No.	Description	Page
12	Mapes 1	May 3, 2019 letter from US	23
13		Department of Justice to	
14	Mapes 2	Mike Mapes LinkedIn profile	47
15		printout	
16	Mapes 3	Code of Federal Regulation	79
17		1301.74 printout from Westlaw	
18	Mapes 4	US Department of Justice DEA	99
19		July 23, 1998 letter to Chris	
20		Zimmerman,	
21		ABDCMDL00315783 -	
22		ABDCMDL00315794	
23	Mapes 5	US Department of Justice DEA	121
24		July 23, 1998 letter to Bergen	
25		Brunswick,	
		US-DEA-00025671	
	Mapes 6	US Department of Justice DEA	122
		letter dated December 27, 2007	
		to registrant,	
		US-DEA-00001771 -	
		US-DEA-00001772	

1	Mapes 7	Memorandum dated August 16, 2005, subject Internet Presentation with AmerisourceBergen on August 10 2005, US-DEA-00000147 - US-DEA-00000164	133
2			
3			
4			
5	Mapes 8	Memorandum dated October 20, 2005, subject Internet Presentation with McKesson Corp. On September 1, 2005, MCKMDL00496859 - MCKMDL00496875	141
6			
7			
8	Mapes 9	Memorandum dated August 23, 2005, subject Meeting with Cardinal Health, Inc., Concerning Internet Pharmacies, US-DEA-00000352 - US-DEA-00000366	142
9			
10			
11			
12	Mapes 10	E-mail(s), CAH_MDL_PRIORPROD_DEA07_00857912-R	145
13			
14	Mapes 11	E-mail(s), CAH_MDL_PRIORPROD_DEA07_01106667-R	146
15			
16	Mapes 12	Order to Show Cause and Immediate Suspension of Registration, ABDCMDL00269383 - ABDCMDL00269387	154
17			
18			
19	Mapes 13	Order of Special Dispensation and Agreement Between The Drug Enforcement Administration and AmerisourceBergen Drug Corporation, ABDCMDL00398334 - ABDCMDL00279857	156
20			
21			
22			
23	Mapes 14	Settlement and Release Agreement, ABDCMDL00279854 - ABDCMDL00279865	158
24			
25			

1	Mapes 15	E-mail(s),	169
		ABDCMDL00316083 -	
2		ABDCMDL00316110	
3	Mapes 16	US Department of Justice DEA	179
		Diversion Control Division	
4		Pharmaceutical Industry	
		Conference printout	
5			
	Mapes 17	AmerisourceBergen Drug	180
6		Enforcement Administration	
		Pharmaceutical Industry	
7		Conference, Wholesale	
		Distribution Diversion Control	
8		Program, September 11, 2017,	
		US-DEA-00001777 -	
9		US-DEA-00001799	
10	Mapes 18	Summary of the DEA-HDMA Meeting	200
		on Suspicious Orders Meeting	
11		Date: Sept 7, 2007,	
		HDS_MDL_00135664 -	
12		HDS_MDL_00135665	
13	Mapes 19	Internet Pharmacies, Joseph	246
		Rannazzisi,	
14		US-DEA-00002413	

(Exhibits attached to the deposition.)

1 VIDEOGRAPHER: We are now on
2 the record.

3 My name is Dan Lawlor. I'm the
4 videographer with Golkow Litigation
5 Services.

6 Today's date is July 11, 2019,
7 and the time is 9:41 a.m.

8 This video deposition is being
9 held in Colorado Springs, Colorado, in
10 the matter of National Prescription
11 Opiate Litigation, MDL Number 2804.

12 The deponent is Michael Mapes.
13 Counsel, please identify
14 yourselves, starting with the
15 plaintiffs.

16 MR. LANIER: My name is Mark
17 Lanier. I'm here on behalf of the
18 plaintiffs.

19 I've got with me from my firm
20 Bob Leone, Rachel Lanier, Georgia
21 Macy, Juan Wilson in the room.

22 And then I know that there are
23 other plaintiffs' attorneys present,
24 but I'll let them identify themselves.

25 MS. FITZPATRICK: Laura

1 Fitzpatrick, Simmons Hanly Conroy.

2 MR. FARRELL: Paul Farrell,
3 Jr., co-lead for the plaintiffs.

4 MR. PIFKO: Mark Pifko, Baron &
5 Budd, for plaintiffs.

6 MR. FULLER: Mike Fuller on
7 behalf of plaintiffs.

8 MS. MCCLURE: And we'll just
9 continue in the room and then we can
10 do the phone.

11 This is Shannon McClure, Reed
12 Smith, on behalf of AmerisourceBergen.

13 MS. PIERCE: Abby Pierce from
14 Reed Smith on behalf of
15 AmerisourceBergen.

16 MR. EPPICH: Chris Eppich of
17 Covington & Burling on behalf of
18 McKesson.

19 MS. MONAGHAN: Meghan Monaghan
20 of Covington & Burling on behalf of
21 McKesson.

22 MS. SWIFT: Kate Swift for
23 Walgreens.

24 MS. WICHT: Jennifer Wicht from
25 Williams & Connolly for Cardinal

1 Health.

2 MR. MASTERS: Brad Masters,
3 Williams & Connolly, Cardinal Health.

4 MR. LAVELLE: John Lavelle from
5 Morgan Lewis on behalf of Rite Aid of
6 Maryland.

7 MR. STEPHENS: Neal Stephens
8 from Jones Day for Walmart.

9 MR. SNAPP: Erik Snapp from
10 Dechert on behalf of the Purdue
11 defendants.

12 MS. VENTURA: Catie Ventura of
13 Kirkland & Ellis on behalf of the
14 Allergan defendants.

15 MS. LEVY: Jennifer Levy from
16 Kirkland & Ellis on behalf of the
17 Allergan defendants.

18 MR. DAVISON: William Davison
19 of Ropes & Gray on behalf of the
20 Mallinckrodt defendants.

21 MR. MONTMINY: Brandan
22 Montminy, Locke Lord, on behalf of the
23 Henry Schein defendants.

24 MR. HAHN: Bill Hahn, Barnes &
25 Thornburg, on behalf of HD Smith.

1 MS. BACCHUS: Renée Bacchus, US
2 Attorney's Office, Northern District
3 of Ohio, on behalf of the Department
4 of Justice and DEA.

5 MS. SPEARS: Mariama Spears on
6 behalf of the DEA.

7 MR. BENNETT: James Bennett
8 from the US Attorney's Office in the
9 Northern District of Ohio on behalf of
10 the Department of Justice and DEA.

11 SPECIAL MASTER COHEN: David
12 Cohen, special master.

13 VIDEOGRAPHER: And counsel on
14 the phone, please identify yourselves.

15 MR. SHKOLNIK: Hunter Shkolnik,
16 plaintiffs.

17 MR. BEISELL: Patrick Beisell
18 for Walmart.

19 COURT REPORTER: I'm sorry, one
20 at a time, please.

21 MS. MCCLURE: Zach?

22 MR. MARTIN: This is Zach
23 Martin, Prescription Supply.

24 MR. SMITH: Jack Smith,
25 Flaherty Sensabaugh Bonasso, for

1 Masters Pharmaceutical.

2 MR. KOBRIN: Josh Kobrin for HB
3 Service Company.

4 MR. SNYDER: Ryan Snyder from
5 O'Melveny & Myers on behalf of Johnson
6 & Johnson and the Janssen defendants.

7 MR. SINDELAR: Jeffrey Sindelar
8 from Tucker Ellis on behalf of Johnson
9 & Johnson and Janssen.

10 MS. BARBER: Maureen Barber
11 from Morgan Lewis for the Teva
12 defendants.

13 MR. RUIZ: Anthony Ruiz from
14 Zuckerman Spaeder for CVS.

15 MR. WEISS: Eric Weiss with
16 Cavitch, Familo & Durkin on behalf of
17 Discount Drug Mart.

18 VIDEOGRAPHER: All right. The
19 court reporter today is Carrie
20 Campbell and will now swear in the
21 witness.

22 EXAMINATION

23 QUESTIONS BY MS. MCCLURE:

24 Q. Good morning, Mr. Mapes.

25 A. Good morning.

1 Q. That was a lengthy introduction
2 to a big room with a lot of people here.

3 So I am Shannon McClure. I'm
4 from the law firm of Reed Smith. I represent
5 AmerisourceBergen Drug Corporation.

6 Thank you for coming here today
7 and tomorrow. We appreciate your appearance
8 here today.

9 We're just going to go through
10 some deposition ground rules so that you are
11 oriented to what we're going to be doing here
12 today.

13 Just to explain the timing to
14 you, which your counsel may have explained,
15 the defendants have been afforded eight hours
16 to question -- to question you, and the
17 plaintiffs have been afforded five hours.

18 Defendants and plaintiffs may
19 each elect to reserve some of their time to
20 go after, so the defendants may go and then
21 the plaintiffs and then a reservation of
22 time.

23 Do you understand that today?

24 A. Yes, I do.

25 Q. And so your deposition will

1 begin today and will continue and conclude
2 tomorrow.

3 This is a question and answer
4 format, so I'll be doing the questions for
5 the first part, and then there will be other
6 defendants who will take over questioning on
7 behalf of the defense, and then the
8 plaintiffs will as well.

9 If there's ever a time that I
10 ask you a question that you don't understand,
11 I would like you to please ask me to rephrase
12 the question and tell me that you don't
13 understand that.

14 Do you understand that
15 instruction?

16 A. Yes, I do.

17 Q. And similarly, if I insert
18 facts or assumptions into a question that are
19 inaccurate, then what I would like you to do
20 is to correct those.

21 Can we agree on that?

22 A. Yes.

23 Q. And similarly, when other
24 counsel question you in the room from either
25 side, will you agree that to the extent that

1 there are factual inaccuracies or predicates
2 that are inserted into a question that you
3 don't agree with, you will not only respond
4 to the question but you would correct those
5 factual inaccuracies?

6 A. Okay.

7 Q. And if you answer my question,
8 then I'm going to assume that you understood
9 the question as I asked it.

10 Is that fair?

11 A. Yes, it is.

12 Q. And today your answers must be
13 verbal. We do have a videocamera set up, but
14 nevertheless, in order for Carrie, the court
15 reporter, to take down what's been said in
16 the room, I do need you to -- instead of
17 nodding or shaking your head, I do need you
18 to provide verbal answers.

19 Can you agree to do that today?

20 A. Yes.

21 Q. It can be easy in the course of
22 normal conversation to nod or shake your
23 head, but she can't get that down.

24 A. Right.

25 Q. Similarly, often in human

1 conversation we know where the other person
2 is going or we start to finish the question
3 that they're asking or answer it before the
4 question has been completed. That makes it
5 difficult later when we need to go back and
6 look at the transcript as to what was said.

7 So what I would ask is that you
8 allow me to finish my questions, and then,
9 similarly, I will allow you to completely
10 finish your answers before I ask another
11 question.

12 Is that fair?

13 A. Yes.

14 Q. And if I do inadvertently
15 interrupt you -- and I assure you it is
16 inadvertent, I don't mean to -- then please
17 just let me know that you're not finished
18 answering, and I will of course stop and let
19 you finish your answer.

20 Is that fair?

21 A. Okay.

22 Q. Okay. There may be objections
23 from time to time interposed by any of the
24 counsel in the room, including Mr. Bennett.
25 For the most part, when objections are

1 interposed, you are still required to answer
2 the question after an objection, say, to
3 form.

4 Do you understand that?

5 A. Yes.

6 Q. There may be occasions where
7 you may be instructed not to answer the
8 question, and in that instance then you would
9 have to determine whether you would follow
10 the instructions of counsel and not answer
11 the question, and there may be discussions
12 among counsel about those instructions.

13 But for the most part, an
14 objection is simply for the record and then
15 you would be required to answer the question.

16 Do you understand that?

17 A. Yes.

18 Q. And you and I have never met
19 before. I introduced myself when I took the
20 government up to the breakout room; is that
21 correct?

22 A. That's correct.

23 Q. And we've never written or
24 exchanged any letters or e-mails?

25 A. That's correct.

1 Q. And we've never spoken on the
2 phone?

3 A. Not that I'm aware of.

4 Q. Or had any communication,
5 right?

6 A. Yep.

7 Q. Okay. And this is a question
8 that often comes up in depositions and might
9 seem strange to you, but it's a standard
10 question that we always ask witnesses.

11 Are you on any medications
12 today that would affect your ability to
13 recall information or testify truthfully here
14 today?

15 A. No.

16 Q. Okay. And you understand that
17 DOJ and DEA have authorized you to testify
18 here today on behalf -- regarding certain
19 topics about your work at DEA, right?

20 A. Yes.

21 (Mapes Exhibit 1 marked for
22 identification.)

23 QUESTIONS BY MS. MCCLURE:

24 Q. I'm going to hand you a
25 document that has been marked Mapes 1. And

1 if you could take a look at that document and
2 let me know when you've had an opportunity to
3 review it.

4 A. Okay. I've reviewed it.

5 Q. Now, given that this document
6 is addressed to you, is it fair for me to
7 assume that you have, in fact, seen this
8 document before?

9 A. I have.

10 Q. This is not the first time
11 you're seeing it?

12 A. That's correct.

13 Q. And to the best of your
14 recollection, did you receive it sometime
15 shortly after May 3, 2019, which is the date
16 on page 1?

17 A. Yes.

18 Q. Okay. The letter references a,
19 quote, "previous denial of authorization" in
20 the first sentence.

21 Do you see that?

22 A. Yes.

23 Q. Had you previously received a
24 communication from DEA or DOJ that there had
25 been a request for your deposition received

1 that had been denied?

2 A. Yes, I had.

3 Q. Okay. Do you recall when you
4 received that communication?

5 A. I don't really remember exactly
6 when it was.

7 Q. And you may not remember
8 exactly when it was. That's fair.

9 Today I'm asking you, right
10 now, about something that was several months
11 ago. In this deposition I'll be asking you
12 about things that may be several years ago or
13 even many years ago.

14 What I would like is for you to
15 tell me in each of those instances where I'm
16 asking you about a time period and you don't
17 exactly remember, that's totally fair. What
18 I would like you to do is tell me if you
19 think -- if you can approximate when it was.
20 Was it a couple of months before this, was it
21 a year before this, if you can recall.

22 A. Probably three or four months
23 before this.

24 Q. And I have not seen that
25 communication. Is it fair to say that it

1 would have been a shorter communication than
2 this one in the fact that you were not, in
3 fact, authorized and thus there were no
4 topics listed, or am I incorrect about that?

5 A. Yes, it was shorter.

6 Q. And in advance of today's
7 deposition, did you review the topics on
8 which you were authorized to provide
9 testimony?

10 A. I did.

11 Q. And that is Topics 1 through 8,
12 which are listed on pages 1 and 2, correct?

13 A. Yes.

14 Q. And then with regard to those
15 areas of testimony, there is a second list
16 which comprises A through M and lists out the
17 subsets of information that you would not be
18 permitted to testify about those topics.

19 Is that a fair reading of this
20 letter?

21 A. Yes.

22 Q. And so things that are
23 privileged information are things that you
24 would not be permitted to testify about
25 within those first eight topics on pages 1 to

1 2, correct?

2 A. Yes.

3 Q. Okay. You can set that
4 document aside for now.

5 Have you been contacted by any
6 party to act as an expert in this matter?

7 A. Yes, I have.

8 Q. And has that been in a
9 testifying expert capacity or in a consulting
10 expert capacity?

11 A. Consulting.

12 Q. Okay. And who is that entity
13 who has retained you?

14 A. The only one that's retained me
15 is Williams Connolly.

16 Q. And have you met with attorneys
17 from Williams & Connolly?

18 A. Yes.

19 Q. And you are aware that they
20 represent Cardinal Health, correct?

21 A. That's correct.

22 Q. Okay. With whom did you meet?

23 A. I've forgotten the names.

24 Jennifer and a couple other attorneys.

25 Q. And was that a single meeting?

1 A. Yes.

2 Q. How long was that meeting?

3 A. Six or seven hours.

4 Q. Do you recall approximately
5 when that meeting was?

6 A. It was the Monday after Easter,
7 whatever that day was.

8 Q. I don't know it either, but
9 thank you for -- that's helpful.

10 Did they provide any documents
11 for you to review, if you recall?

12 A. No, I don't recall reviewing
13 documents.

14 Q. Have you seen any of the
15 plaintiffs' expert reports in this case?

16 A. No.

17 Q. Did you review Cardinal's DEA
18 expert report authored by Brian Reise?

19 A. No.

20 Q. Since the time that you were
21 authorized by DEA on May 3, 2019, to testify
22 as a fact witness in this case, have you
23 spoken with anyone at Williams & Connolly or
24 anyone representing Cardinal Health about any
25 work for them?

1 A. No.

2 Q. Have you done any expert work
3 in this case since you were authorized to
4 testify pursuant to Exhibit 1, which is the
5 May 3rd letter?

6 A. No.

7 Q. Did you meet with anyone to
8 prepare for your deposition today?

9 A. Yes, I did.

10 Q. Okay. And who did you meet
11 with?

12 A. The three attorneys here.

13 Q. And by "the three attorneys
14 here," you're talking about the three
15 attorneys to your left --

16 A. Yes.

17 Q. -- which is Mr. Bennett,
18 Ms. Spears and Ms. Bacchus?

19 A. Yes.

20 Q. Was there anyone else in those
21 meetings?

22 A. No.

23 Q. Were those meetings conducted
24 as a conference call?

25 Was there anyone on a phone?

1 A. No.

2 Q. Did you meet one time or more
3 than one time with those three attorneys?

4 MR. BENNETT: Objection. Form.

5 Are you talking about for this
6 deposition?

7 MS. MCCLURE: Let me rephrase.

8 QUESTIONS BY MS. MCCLURE:

9 Q. The three attorneys to your
10 left that you identified, have you met with
11 them for multiple reasons, in other words,
12 for this deposition and for other reasons?

13 A. Yes, I met with them twice.

14 Q. Okay. What was the nature
15 of -- I assume one of the meetings, at least,
16 was to prepare for this deposition; is that
17 correct?

18 A. It is.

19 Q. And what was the nature of the
20 other meeting?

21 A. To discuss my background with
22 DEA, the things that I've done, what I've
23 been involved in, that kind of thing.

24 Q. So is it fair to say that that
25 was an informational meeting that you had

1 with these three attorneys?

2 A. Yes.

3 Q. And then the second meeting was
4 specifically to prepare for the deposition?

5 A. Yes.

6 Q. How long did the first
7 meeting -- and by "the first meeting," I'm
8 referring to the informational meeting --
9 last?

10 A. Three or four hours.

11 Q. Where was that meeting?

12 A. It was in the DEA office here
13 in Colorado Springs, and some people were on
14 the phone.

15 Q. Okay. So for the informational
16 meeting, who was physically present with you
17 in the room at the DEA office in Colorado
18 Springs?

19 A. Mr. Bennett was, and I don't
20 recall if anyone else was physically present
21 in the room.

22 Q. To the best of your
23 recollection, were Ms. Bacchus and Ms. Spears
24 on the phone for that meeting, that
25 informational meeting?

1 A. I'm not sure who was on the
2 phone. I don't remember.

3 Q. So it's possible there are
4 other attorneys, other than the three you've
5 named here today, who were present on the
6 phone for that first informational meeting?

7 A. It's possible, yes.

8 Q. But as of right now, you just
9 don't remember who they were?

10 A. That's correct.

11 Q. For the second meeting to
12 prepare for this deposition, how long was
13 that meeting?

14 A. Four hours.

15 Q. Where was that meeting?

16 A. At the DEA office here in
17 Colorado Springs.

18 Q. And when was that meeting?

19 A. Yesterday.

20 Q. When was the informational
21 meeting that was the first meeting?

22 A. Early this year. I don't know
23 exactly when, but several months ago.

24 Q. Do you recall whether that
25 first meeting was before or after you

1 received that first communication that I
2 don't have a copy of that did not authorize
3 you to appear for a deposition?

4 A. I'm not certain.

5 Q. Have you met with anyone from
6 plaintiffs' counsel in preparing for today's
7 deposition or in the informational meeting
8 that you discussed that was several months
9 ago?

10 MR. BENNETT: Objection.

11 Compound.

12 QUESTIONS BY MS. MCCLURE:

13 Q. Let me rephrase.

14 Did you meet with anyone from
15 plaintiffs' counsel today before -- in
16 preparation for today's deposition?

17 A. No.

18 Q. Okay. And so some names of
19 plaintiffs' attorneys would be Mark Lanier,
20 Don Migliori, Linda Singer, Jayne Conroy,
21 Ms. Finkelstein, Hunter Shkolnik, Pete
22 Weinberger, Mike Fuller, Mark Pifko, Paul
23 Farrell, none of those attorneys were
24 attorneys that you met with in preparation
25 for your deposition today?

1 MR. BENNETT: Objection. Form.

2 You can answer.

3 THE WITNESS: That's correct.

4 QUESTIONS BY MS. MCCLURE:

5 Q. During your meeting yesterday
6 to prepare for this deposition today, was
7 there anyone on the phone?

8 A. No.

9 Q. And to the best of your
10 knowledge, that long list of plaintiffs'
11 attorneys that I've provided you were not on
12 the phone for your informational meeting, but
13 you can't be certain because you don't recall
14 exactly who was on the phone; is that fair?

15 A. I believe anybody that was on
16 the phone was a government attorney, so they
17 wouldn't have been the plaintiffs' attorneys.

18 Q. Great. Thank you.

19 And have you retained private
20 counsel for this deposition here today?

21 A. No, I have not.

22 Q. So you didn't work with any
23 private counsel in preparation for your
24 testimony here today?

25 A. That's correct.

1 Q. And by "private counsel," I'm
2 referring to nongovernmental attorneys.

3 A. Right.

4 Q. Okay. Separately from the
5 meetings we've discussed, which is the
6 informational meeting several months ago and
7 then the preparation for your deposition here
8 today, have you met with plaintiffs' counsel
9 regarding this case generally?

10 A. I did meet with plaintiffs'
11 counsel a couple of times in Washington, DC.

12 Q. And by "a couple of times,"
13 does that mean two times?

14 A. Yes.

15 Q. And was that two different
16 times or two consecutive days?

17 A. Two different times.

18 Q. When were those meetings,
19 approximately?

20 A. Last late summer and fall.

21 Q. So summer and fall of 2018?

22 A. Yes.

23 Q. How long were those meetings?

24 A. Two or three hours each.

25 Q. Where were they?

1 A. In an office downtown in DC.

2 Q. Do you recall whose office?

3 A. No, I don't.

4 Q. And who attended those?

5 Well, let me ask first this
6 question. We'll call those the first and
7 second meetings in the spring and fall
8 of 2018 -- summer and fall of 2018.

9 For the summer of 2018 meeting,
10 who attended that meeting?

11 A. Joseph Rannazzisi, who was also
12 with DEA, retired, myself, and there were
13 five or six attorneys from various law firms.

14 Q. Do you recall their names?

15 A. No, I don't.

16 Q. Do you see any of those
17 attorneys in the room here today?

18 A. No.

19 Q. How did that meeting come
20 about, that summer of 2018 meeting?

21 A. I was contacted by Joseph
22 Rannazzisi. He told me that he was working
23 with this group and asked me to come to
24 Washington to meet with the group.

25 Q. When you say he said "he was

1 working with this group," what group did he
2 mean, to your understanding?

3 A. This group of attorneys that
4 were plaintiffs' attorneys.

5 Q. And so you understood that
6 these were plaintiffs' attorneys representing
7 city, county governments in opioid
8 litigation?

9 A. Representing -- excuse me.
10 Representing states, Indian tribes, cities,
11 counties.

12 Q. Okay. Any other type of
13 entities you understood that this group of
14 plaintiffs' attorneys represented?

15 A. No.

16 Q. And was Joseph Rannazzisi
17 present for the entire first meeting in the
18 spring -- in the summer or fall of 2018?

19 A. He was.

20 Q. Were you retained as an expert
21 at the conclusion of either the first or the
22 second meeting in 2018 with plaintiffs'
23 counsel?

24 A. No, I was not.

25 Q. Tell me what you can remember

1 from those meetings.

2 A. Generally, discussions about
3 DEA policies, suspicious order monitoring,
4 that kind of issue.

5 Q. The second meeting in summer or
6 fall of 2018, who was present?

7 A. Joseph Rannazzisi was present
8 and some of the same group of attorneys.

9 Q. But do you know whether it was
10 the exact same group or it might have shifted
11 to some degree?

12 A. It could have been shifted
13 somewhat, but mostly the same.

14 Q. Do you see any attorneys in
15 this room who attended that second meeting?

16 A. No.

17 Q. And why did the second meeting
18 happen, to your knowledge?

19 A. They had more questions about
20 suspicious order monitoring, quotas, ARCOS,
21 those kind of issues.

22 Q. Other than DEA policies,
23 quotas, ARCOS and suspicious order
24 monitoring, can you recall any other topic
25 from either of those two meetings that you

1 discussed with plaintiffs' counsel?

2 A. No.

3 Q. Do you remember what you
4 discussed about quotas?

5 A. Very little, because my
6 knowledge of quotas is very limited.

7 Q. Of that very little that you
8 discussed about quotas, do you remember what
9 specifically you discussed about quotas given
10 your limited knowledge?

11 A. That there are quotas set for
12 manufacturing of certain drugs, and the DEA
13 sets those quotas, and different
14 manufacturers have their share of the quota
15 for different drugs. That's about it.

16 Q. Do you recall what you
17 discussed in those two meetings about ARCOS?

18 A. Just generally what ARCOS is
19 and where the information comes from and how
20 it's used.

21 Q. And what is ARCOS?

22 A. ARCOS is a system that collects
23 information from all sales of Schedule II
24 drugs and Schedule III narcotic drugs.

25 Q. So it's transactional data?

1 A. Yes.

2 Q. Provided by whom?

3 A. By the registrants that are
4 selling the drugs.

5 Q. And what did you tell
6 plaintiffs' counsel about how ARCOS is used?

7 A. It's used to see which drugs
8 are going to which pharmacies from which
9 wholesalers. It's used to look at pharmacies
10 to see if they're buying from several
11 wholesalers, that kind of thing.

12 Q. ARCOS is accessible to DEA,
13 correct?

14 A. Yes.

15 Q. ARCOS is not accessible to
16 registrants in the industry, correct?

17 A. I don't know if it is today.
18 It was not when I was there.

19 Q. So registrants would generally
20 have access to their own transactional data,
21 correct?

22 A. Yes.

23 Q. But not the transactional data
24 of, say, a competitor of theirs who is also a
25 wholesaler?

1 A. That's correct.

2 Q. And what did you tell the
3 plaintiffs' attorneys regarding suspicious
4 order monitoring, that topic?

5 A. We discussed the suspicious
6 order monitoring, what the regulation says
7 about suspicious order monitoring, and what
8 the current practice is within DEA.

9 Q. And by "current practice," you
10 mean today?

11 A. Yes.

12 Q. Now, you left DEA. We'll go
13 through your background in more detail, but
14 you left DEA in 2007, correct?

15 A. That's correct.

16 Q. But you're aware of the current
17 practice today with respect to DEA because
18 you are still in the industry and are aware
19 of DEA practices; is that fair?

20 A. That specific practice, yes,
21 because I've talked to DEA folks about it.

22 Q. When you say you've "talked to
23 DEA folks" about that specific practice, are
24 you saying you've talked to DEA folks since
25 you left DEA in 2007 regarding DEA's approach

1 to suspicious order monitoring?

2 A. Yes.

3 Q. With whom have you had
4 discussions at DEA since you left it in 2007
5 about DEA's approach to suspicious order
6 monitoring?

7 A. More than one person. The one
8 I remember is Cathy Gallagher, who was the
9 chief of the liaison and policy section.

10 Q. And have you talked with
11 Ms. Gallagher once or more than once?

12 A. More than once.

13 Q. How regularly have you
14 communicated with Ms. Gallagher since 2007
15 regarding DEA's approach to suspicious order
16 monitoring?

17 A. Not regularly. It's been two
18 or three times, possibly.

19 Q. And that's two or three times
20 since 2007?

21 A. Yes.

22 Q. Have you spoken with anyone
23 else at DEA regarding DEA's approach to
24 suspicious order monitoring since the time
25 you left DEA?

1 A. No.

2 Q. So a minute ago when I asked
3 you with whom had you spoken with DEA since
4 you left in 2007 about DEA's approach to
5 suspicious order monitoring, I thought you
6 indicated that it was more than one person,
7 but the one that you remembered was Cathy
8 Gallagher.

9 Is there more than one person
10 that you've spoken with since 2007?

11 A. I don't recall talking to
12 anyone else about that specific subject.

13 Q. Have you talked with DEA
14 representatives since you left in 2007 about
15 other nonsuspicious order monitoring topics?

16 A. About DEA policy specifically
17 or about other --

18 Q. I'm not asking about your
19 personal connections with people you may have
20 worked with that you keep in touch with about
21 non-DEA matters.

22 So my question is limited to
23 DEA-related matters, whether it's suspicious
24 order monitoring or policies or something
25 else, enforcement approach. You tell me what

1 the topics would be.

2 MR. BENNETT: Objection. Form.

3 Go ahead.

4 THE WITNESS: I have spoken
5 with other people in DEA about issues
6 related to pharmacies that I was
7 working for and DEA's approach with
8 those pharmacies.

9 QUESTIONS BY MS. MCCLURE:

10 Q. So about specific registrants?

11 A. Yes.

12 Q. That you were either employed
13 by or consulting for?

14 A. Yes, employed by.

15 Q. And was the nature of those
16 conversations asking for guidance from DEA,
17 or were you providing information to DEA?

18 A. Providing information about
19 what the pharmacy was doing, how they were
20 handling controlled substances.

21 Q. How about the topic of DEA
22 policies?

23 We're going back to the
24 meetings that you had in summer and fall
25 of 2018 with plaintiffs' counsel.

1 What did you tell plaintiffs'
2 counsel regarding DEA's policies?

3 A. Are we talking a particular
4 policy, like suspicious orders, or...

5 Q. I don't know.

6 Did you discuss more than one
7 policy, DEA policy, with plaintiffs' counsel?

8 A. I don't think so because I
9 hadn't been there for a number of years, so I
10 wasn't sure what DEA's current policies are
11 on most topics.

12 Q. But you recall discussing
13 suspicious order monitoring, DEA policies,
14 with plaintiffs, correct?

15 A. Yes.

16 Q. And were those DEA policies
17 that you discussed with plaintiffs in the
18 summer or fall of 2018 the policies that had
19 been in effect when you were at DEA? So
20 prior to December of 2007.

21 A. We discussed those policies as
22 part of the Distributor Initiative meetings
23 that we had with wholesalers.

24 Q. Were you paid for your
25 attendance at these two meetings?

1 A. Yes.

2 Q. How much were you paid?

3 A. \$300 an hour.

4 Q. And each of the meetings was
5 two to three hours, meaning that the most it
6 was was six hours, is that correct, in total?

7 A. It may have been an hour or two
8 more. I don't recall for sure.

9 Q. Okay. Were you asked to serve
10 as an expert at the conclusion of or during
11 these meetings?

12 A. We discussed it, but it didn't
13 go any further.

14 Q. Why?

15 A. You would have to ask them.

16 Q. Do you have any understanding
17 as to why you were not retained as an expert?

18 A. No.

19 Q. Were those meetings
20 informational meetings in which you were
21 providing information to the plaintiffs, or
22 were the plaintiffs also providing you
23 information about their lawsuits?

24 A. It was mostly me providing
25 information to them in response to their

1 questions.

2 Q. Do you recall any information
3 that they provided to you?

4 A. No.

5 (Mapes Exhibit 2 marked for
6 identification.)

7 QUESTIONS BY MS. MCCLURE:

8 Q. I'm going to hand you a
9 document that's been marked as Mapes
10 Exhibit 2, which is a LinkedIn printout of
11 your bio.

12 If you could take a moment and
13 review that, and let me know when you've had
14 a chance to do so.

15 A. I have.

16 Q. And so according to this
17 profile, you worked for DEA for a little more
18 than 30 years in total, correct?

19 A. That's correct.

20 Q. From 1977 to 2007?

21 A. Yes.

22 Q. And you held a number of
23 positions over the course of your tenure at
24 DEA, correct?

25 A. Correct.

1 Q. Were all of those positions in
2 the diversion side of DEA?

3 MR. BENNETT: Objection. Form.

4 THE WITNESS: They were all
5 related to the diversion program, yes.

6 QUESTIONS BY MS. MCCLURE:

7 Q. And so some of your positions
8 may not have been actually having you housed
9 in diversion, but the subject matter about
10 which you were employed for DEA related to
11 diversion in all of your 30-year -- in all of
12 your positions over 30 years?

13 A. That's correct.

14 Q. You started out as a diversion
15 investigator in Detroit and Cleveland?

16 A. Yes.

17 Q. Detroit was approximately
18 '80 -- sorry, '77 to '83 or '84?

19 A. Yes.

20 Q. And then Cleveland was '83 or
21 '84 to '85 or '86?

22 A. Yes.

23 Q. I note that you graduated from
24 college, which was Ferris State University,
25 in 1974; is that correct?

1 A. It is.

2 Q. And then what -- did you have
3 any jobs or positions between 1974 and 1977?

4 A. I did.

5 Q. What were those?

6 A. I was a deputy sheriff for
7 about two and a half years in Michigan, and
8 after that I worked for the -- as a civilian
9 for the Department of the Army as a budget
10 analyst for about a year.

11 Q. And then you applied for a
12 position at DEA?

13 A. Yes.

14 Q. What is a diversion
15 investigator?

16 A. Someone that investigates
17 registrants or potential registrants that
18 handle controlled substances, investigates
19 the movement of controlled substances and
20 diversion of controlled substances from
21 legitimate channels.

22 Q. In the course of your duties as
23 a diversion investigator, did you conduct
24 audits or cyclic investigations of
25 registrants?

1 A. I did.

2 Q. Including wholesalers?

3 A. Yes.

4 Q. In connection with those cyclic
5 audits -- am I using the correct phrase?

6 A. Yes.

7 Q. Okay. In connection with those
8 cyclic audits, would you review suspicious
9 order monitoring systems?

10 A. Yes.

11 Q. Was that a standard part in
12 your experience of a diversion investigator's
13 role?

14 A. It was.

15 Q. And so it was a responsibility
16 that diversion investigators needed to carry
17 out with respect to registrants for the field
18 office to which they were assigned?

19 A. That's correct.

20 Q. The results of those audits
21 would be reported on a DEA 6 report?

22 A. They would.

23 Q. If a diversion investigator
24 determines that a registrant was not
25 complying with the regulations, would the

1 investigator tell the registrant what that
2 registrant was doing wrong?

3 MR. BENNETT: Objection.

4 Incomplete hypothetical.

5 QUESTIONS BY MS. MCCLURE:

6 Q. You can answer.

7 A. Yes, they would.

8 Q. And that's in your experience
9 at DEA?

10 A. Yes.

11 Q. As a diversion investigator?

12 A. Yes.

13 Q. And later as a group
14 supervisor, you expected your diversion
15 investigators to communicate with registrants
16 about what they were doing wrong?

17 A. Yes.

18 Q. So that they could correct it?

19 A. That's right.

20 Q. Was it an expectation in your
21 experience that a diversion investigator in
22 such a circumstance would follow up to see if
23 that issue had been corrected?

24 MR. BENNETT: Objection. Form.

25 THE WITNESS: It would be

1 followed up, whether it was by that
2 diversion investigator or another one.

3 QUESTIONS BY MS. MCCLURE:

4 Q. Okay. Audits can also be
5 conducted outside of the cyclic process if
6 there was a particular reason or something
7 came up that suggested that an audit might be
8 appropriate; is that accurate?

9 A. It is.

10 Q. What was your next position at
11 DEA after diversion investigator in
12 Cleveland?

13 A. I was a staff coordinator at
14 headquarters in Washington, DC.

15 Q. And was that for -- for how
16 long a period of time?

17 A. A little less than a year.

18 Q. What is the job of a staff
19 coordinator?

20 A. To review the reports from a
21 field office and the requests from the field
22 office for assistance with investigative
23 matters.

24 Q. So do I have it correct that a
25 field office, one of DEA's field offices, may

1 reach out to headquarters because they had
2 something that they required more resources
3 for than they had available to them?

4 A. Either resources in terms of
5 funding or in terms of more personnel or
6 whatever they needed.

7 Q. Did headquarters have access to
8 some information that a field office would
9 not have had access to?

10 A. Yes.

11 Q. Let me rephrase that question.

12 Would a diversion investigator
13 reach out to a staff coordinator such as
14 yourself to get some information to support
15 an investigation?

16 MR. BENNETT: Objection. Form.

17 THE WITNESS: They may.

18 QUESTIONS BY MS. MCCLURE:

19 Q. You later became an instructor
20 at Quantico?

21 A. Yes.

22 Q. Quantico is a location in
23 Virginia where DEA diversion investigators
24 train; is that right?

25 A. It is.

1 Q. And what did you -- did you, in
2 fact, instruct those potential diversion
3 investigators in the course of that position?

4 A. I did.

5 Q. What did you instruct them
6 about?

7 A. Various topics related to
8 diversion, whether it's drug field testing,
9 auditing, those kind of things.

10 I didn't do the majority of the
11 teaching for diversion investigators. We had
12 folks from the field come in and do that.

13 Q. But you did some instruction
14 about diversion?

15 A. Yes.

16 Q. Your next position in the
17 1990s, if I have this timing correct, was as
18 a group supervisor in the Denver field
19 office?

20 A. That's correct.

21 Q. What were the years of that
22 position?

23 A. Roughly '92 to '97.

24 Q. Were you also a regional
25 manager of diversion control --

1 A. Yes.

2 Q. -- in that same time period?

3 A. Yes. The diversion program

4 manager, yes.

5 Q. Is that a different position,

6 or is that part of the group supervisor

7 title?

8 A. That's a different position.

9 Q. How did the duties of a

10 diversion program manager differ from those

11 of a group supervisor?

12 A. The supervisor supervises a

13 group of investigators, in this case in the

14 Denver office, and the manager deals with the

15 supervisor in Denver, the supervisor in Salt

16 Lake City, the supervisor in Albuquerque, in

17 the entire field division.

18 Q. Okay. So the regional man --

19 I'm sorry. The diversion program manager is

20 a higher-up position than the group

21 supervisor?

22 A. Yes.

23 Q. And what were the years that

24 you held the position of diversion program

25 manager?

1 A. Roughly '97, '98-ish.

2 Q. And in each of these two
3 positions, the group supervisor position and
4 the diversion program manager position, you
5 oversaw diversion investigators, or the group
6 supervisors who are overseeing those
7 diversion investigators, in connection with
8 their oversight and investigation and
9 enforcement of the Controlled Substances Act;
10 is that correct?

11 A. Yes.

12 Q. What was your next position
13 after diversion program manager?

14 A. Liaison with the United Nations
15 International Archives Control Board in
16 Vienna, Austria.

17 Q. Did you actually live in
18 Vienna?

19 A. Yes.

20 Q. And that was for approximately
21 two years?

22 A. Yes.

23 Q. And what were your
24 responsibilities in that position?

25 A. Working mostly with the

1 precursor control group of the UN to deal
2 with issues between countries about shipments
3 of precursor chemicals for controlled
4 substance manufacture.

5 Q. And your next position was
6 deputy chief of the liaison and policy
7 section?

8 A. It was.

9 Q. And is that a promotion from
10 what your prior position had been?

11 A. No, it was a lateral.

12 Q. Was it a promotion from the
13 diversion program manager role?

14 A. No, it was lateral.

15 Q. That's all lateral.

16 And what were your
17 responsibilities as deputy chief of liaison
18 and policy?

19 A. Working with the staff
20 coordinators and with the section chief to
21 work with the industry to interpret policies
22 and procedures, and work with those who were
23 writing Federal Register announcements about
24 various issues.

25 Q. When you say "work with those

1 who were writing Federal Register
2 announcements," what does that mean?

3 A. For issues related to the
4 Office of Diversion, there were a couple of
5 people in liaison and policy who wrote the
6 Federal Register announcements about
7 policies, and so we'd review those and
8 discuss those and that kind of thing.

9 Q. So did you have oversight
10 responsibility over the individuals who were
11 writing announcements about DEA policies in
12 the Federal Register?

13 A. They worked for a unit chief,
14 and the unit chief reported to the section
15 chief that I worked with, but I didn't have
16 oversight.

17 Q. What was your next position
18 after deputy chief of liaison and policy?

19 A. I was chief of the planning and
20 resources section at headquarters.

21 Q. How long did you have that
22 role?

23 A. About two years.

24 Q. So what years are we in at this
25 point for the planning and resources role?

1 A. 2003 and '4, possibly.

2 Q. And what were the
3 responsibilities of that position?

4 A. Dealing with personnel issues,
5 hiring, budget issues, equipment, those kind
6 of things.

7 Q. And your next position after
8 the planning and resources one?

9 A. Was chief of the E-Commerce
10 section.

11 Q. So did that begin in
12 approximately 2004?

13 A. Yes.

14 Q. And go through when?

15 A. Middle of 2005.

16 Q. What is chief of a section at
17 DEA? What does that mean?

18 A. It means that there are units
19 within a section that have people that are
20 performing various functions, and the section
21 chief is the manager of the unit chiefs.

22 Q. So who were the unit chiefs
23 that you were overseeing in the E-Commerce
24 section?

25 MR. BENNETT: Objection to

1 form. Time.

2 QUESTIONS BY MS. MCCLURE:

3 Q. So he's identified the time
4 period as -- am I correct that it's 2004 to
5 2005 that you were the chief of E-Commerce?

6 A. Yes.

7 Q. How many unit chiefs did you
8 have?

9 A. Three, I believe.

10 Q. And did they each have
11 different roles?

12 A. Yes.

13 Q. What were those roles?

14 A. One was dealing with the
15 programs known as CSOS and EPCS, computerized
16 programs, one was detailing with the
17 contractors that were working in the
18 programs, and one was the targeting and
19 analysis unit that was looking at data from
20 available sources.

21 Q. Did the data from available
22 sources that the targeting and analysis unit
23 look at include ARCOS?

24 A. Yes.

25 Q. What other sources?

1 MR. BENNETT: Objection.

2 Scope.

3 You're not authorized to
4 disclose any confidential law
5 enforcement databases or confidential
6 law enforcement investigative tools.

7 To the extent that you can
8 answer without disclosing such
9 confidential databases or
10 investigative tools, you may answer
11 the question.

12 THE WITNESS: There's none
13 other -- other tools that are public
14 tools.

15 QUESTIONS BY MS. MCCLURE:

16 Q. So the only public tool that
17 you are authorized here to discuss today that
18 targeting and analysis work with is ARCOS,
19 correct?

20 A. Correct.

21 Q. In that role as chief of
22 E-Commerce, did you meet with registrants?

23 A. I had meetings with
24 representative of different registrants to
25 talk about different issues.

1 Q. What do you mean by
2 "representatives"?

3 A. It might be someone from their
4 IT department or someone from their legal
5 department or someone from their compliance
6 department or something like that.

7 Q. You then served as the chief of
8 the regulatory unit?

9 A. That's correct.

10 Q. What is the regulatory unit?

11 A. It was a unit that looked at --
12 well, it was a section that looked at the
13 regulatory investigations that were done
14 within the Office of Diversion Control by the
15 field offices. Also issued import/export
16 declarations and permits for controlled
17 substances that were coming into or leaving
18 the country.

19 Q. When you say that that section
20 looked at the regulatory investigations that
21 were done within the Office of Diversion
22 Control, what does that mean, to look at
23 them?

24 A. It means all the reports that
25 are written by the field offices come to the

1 staff coordinators in headquarters that
2 review those to see if they're following the
3 appropriate policies and procedures and see
4 if there are issues that are consistent
5 issues across the country with several
6 registrants or not.

7 Q. What would those reports be
8 called that you reviewed?

9 A. They would be DEA 6s that were
10 reports of investigation of registrants of
11 any kind.

12 Q. You left DEA in 2007?

13 A. That's correct.

14 Q. At that time were you the chief
15 of the regulatory unit?

16 A. The regulatory section, yes.

17 Q. I'm sorry, the regulatory
18 section.

19 And why did you leave DEA?

20 A. I retired.

21 Q. And after that you became a
22 consultant, correct?

23 A. Yes.

24 Q. Is that what iSAW means,
25 I-S-A-W? Is that your company?

1 A. No, it's not.

2 Q. Okay. What is iSAW?

3 A. It's a company that's
4 developing technology to identify suspects
5 and witnesses to criminal activity.

6 Q. Is iSAW related to diversion --

7 A. No.

8 Q. -- or the pharmaceutical
9 industry?

10 A. No.

11 Q. After you left DEA in 2007,
12 were you also a consultant in the industry
13 for diversion-related questions or issues?

14 A. Yes, I was.

15 Q. And did that -- did you form a
16 consulting company for that?

17 A. No, that was mostly an
18 independent consultant.

19 Q. But there's not a company name
20 or something like that that I would -- that
21 you would be able to tell me for the purpose
22 of your post-DEA consulting to industry
23 regarding diversion?

24 A. A pharmacy that I worked for
25 created a company to do consulting. That was

1 a Controlled Substance Compliance Group, but
2 that was owned by that pharmacy, and I worked
3 with them and did consulting.

4 Q. When did you begin working for
5 that pharmacy?

6 A. About 2009.

7 Q. And what is that pharmacy
8 called at that time in 2009?

9 A. At the time that pharmacy was
10 Assured Pharmacy.

11 Q. And so Assured created a
12 subsidiary company called the Controlled
13 Substance Compliance Group.

14 Do I have that correct?

15 A. Yes.

16 Q. And you began working for the
17 Controlled Substance Compliance Group in
18 2009?

19 A. No, that wasn't created until
20 probably 2013-ish.

21 Q. And so initially you worked
22 directly for Assured?

23 A. Yes.

24 Q. What kinds of activities did
25 you do for Assured?

1 A. I was the chief compliance
2 officer for the group of pharmacies and wrote
3 policies and procedures, reviewed the
4 pharmacies to be sure they're following the
5 policies and procedures.

6 Q. Are you still working for
7 Assured today?

8 A. No.

9 Q. When did you stop working for
10 Assured?

11 A. Assured was bought out by
12 another group called Cordant Health Services,
13 and so they became known as Cordant
14 pharmacies, and I worked with them through
15 the end of 2015.

16 Q. So from 2009 through 2015, you
17 were working for Assured or Cordant,
18 depending on what the name was at the time?

19 A. Right.

20 Q. Did your job duties change over
21 that 2009 to 2015 time period?

22 A. No.

23 Q. Going back to your independent
24 consulting unrelated to Assured or Cordant,
25 there's no company name that you had or that

1 you used for that kind of consulting,
2 correct?

3 A. Correct.

4 Q. And who were your clients in
5 the independent consulting business that you
6 had after leaving DEA, to the best that you
7 can recall?

8 A. AmerisourceBergen, HD Smith,
9 Meijer Company, M-e-i-j-e-r, Henry Schein,
10 Physicians Pharmaceutical Corporation.

11 There's others I just can't
12 recall this second.

13 Q. Okay. During what period of
14 time were you acting as an independent
15 consultant after leaving DEA in 2007?

16 A. The --

17 Q. And I'm talking now
18 specifically about the consulting relating to
19 diversion.

20 A. From 2008 through 2015 or '16.

21 Q. So there's some overlap there
22 between the independent consulting work that
23 you were doing and your work for Assured and
24 Cordant in terms of time, correct?

25 A. Yes. Assured was part time.

1 Q. Okay. Did Assured become full
2 time at some point?

3 A. No.

4 Q. So for the entire 2009 to 2015
5 time period with Assured and then Cordant,
6 that was all part time?

7 A. That's correct.

8 Q. What was your first position
9 that was physically located at DEA
10 headquarters?

11 A. That was the staff coordinator.

12 Q. Okay.

13 MR. BENNETT: Do you need a
14 break, or are you okay?

15 QUESTIONS BY MS. MCCLURE:

16 Q. And that was 2001 to 2003?

17 A. No.

18 Q. If I have it wrong, then tell
19 me.

20 A. Yeah, that was -- that was
21 earlier than that. That was right after
22 Cleveland.

23 Q. Okay. Thank you.

24 So Cleveland ended in '85, '86,
25 right?

1 A. Yes.

2 Q. Okay. Then you went back into
3 the field, correct, at some point?

4 MR. BENNETT: Objection. Form.

5 QUESTIONS BY MS. MCCLURE:

6 Q. When you were working -- let me
7 rephrase that.

8 During the time that you were a
9 group supervisor, that was in Denver --

10 A. Correct.

11 Q. -- not at headquarters,
12 correct?

13 A. Correct.

14 Q. And during the time that you
15 were the diversion program manager, that was
16 not physically located at headquarters,
17 correct?

18 A. Correct.

19 Q. Okay. When was the next
20 position that you had when you went to --
21 when you were working at headquarters?

22 MR. BENNETT: Objection. Form.

23 THE WITNESS: When I went back
24 to headquarters, it was the deputy
25 chief of liaison and policy first.

1 QUESTIONS BY MS. MCCLURE:

2 Q. Okay. Thank you.

3 In 2005, who was the head of
4 the Office of Diversion Control?

5 A. I'm not certain. It could have
6 been one of a couple of different people.

7 Q. Was Bill Walker one of those
8 couple of different people?

9 A. Yes.

10 Q. Who else could it have been?

11 A. Joe Rannazzisi.

12 Q. You just don't recall when the
13 transition happened?

14 A. Correct.

15 Q. Did Joe Rannazzisi take over
16 that role from Bill Walker?

17 A. Yes.

18 Q. Okay. No one in between,
19 correct?

20 A. Correct.

21 Q. Did you work with Joe
22 Rannazzisi in that time period?

23 A. I did.

24 Q. Did you report to him?

25 A. I did.

1 Q. And this is in the role as
2 chief of liaison and policy or chief of the
3 E-Commerce section?

4 A. Either E-Commerce or the
5 regulatory section. I'm not sure exactly
6 when he came in.

7 Q. Right.

8 So he was not the head of the
9 Office of Diversion when you were chief of
10 liaison and policy?

11 A. No, that was Laura Nagel.

12 Q. But you don't recall whether
13 you reported to him in your role as chief of
14 E-Commerce or chief of regulatory section or
15 both?

16 A. I did, as chief of regulatory
17 section, report to Joe Rannazzisi, but I'm
18 not sure in E-Commerce who it was.

19 Q. Now, you previously talked
20 about your role in -- do I have it --
21 planning and budget?

22 Do I have that title correct?
23 Probably not.

24 A. It was planning and resources.

25 Q. Planning and resources.

1 There's two different sides to
2 DEA, correct?

3 A. Yes.

4 MR. BENNETT: Objection. Form.

5 You can answer.

6 QUESTIONS BY MS. MCCLURE:

7 Q. And is there some other word
8 that you would use to refer to them other
9 than "sides"?

10 A. Well, there is the diversion
11 part of DEA, there's enforcement, there's
12 intelligence, there's laboratories. So
13 there's several different aspects to DEA.

14 Q. So you said diversion,
15 enforcement, lab --

16 A. Intelligence, laboratories.

17 Q. Is diversion funded differently
18 than enforcement?

19 A. It is.

20 Q. How is that funding different?

21 A. It's paid for through a fee
22 account by fees paid by the registrants to
23 register.

24 Q. You said there's the laboratory
25 section and the intelligence section.

1 Do laboratories and
2 intelligence support both enforcement and
3 diversion, or do they support one or the
4 other?

5 MR. BENNETT: Objection.

6 Scope.

7 You can answer.

8 THE WITNESS: Yes, both.

9 QUESTIONS BY MS. MCCLURE:

10 Q. And how is enforcement funded?

11 MR. BENNETT: Objection.

12 Scope.

13 THE WITNESS: Through

14 Congressional appropriations.

15 QUESTIONS BY MS. MCCLURE:

16 Q. What is on-call time, if you
17 know?

18 A. I don't know.

19 Q. Okay. That's not something
20 that happened in the diversion side?

21 A. No, it's nothing I've heard of.

22 Q. So if diversion is funded by
23 fee accounts paid for by registrants, the
24 fees that are set for registrants are at
25 DEA's discretion and under DEA's control; is

1 that right?

2 MR. BENNETT: Objection.

3 Scope.

4 THE WITNESS: They're set
5 through a rulemaking process.

6 QUESTIONS BY MS. MCCLURE:

7 Q. That includes input from DEA?

8 A. Yes.

9 MS. MCCLURE: Why don't we go
10 off the record and take a short break.

11 MR. BENNETT: Okay.

12 VIDEOGRAPHER: We're going off
13 record. The time is 10:49.

14 (Off the record at 10:49 a.m.)

15 VIDEOGRAPHER: We're going back
16 on record, beginning Media File
17 Number 2. The time is 11:06.

18 QUESTIONS BY MS. MCCLURE:

19 Q. Still good morning, Mr. Mapes.
20 You understand that you're
21 still under oath today?

22 A. I do.

23 Q. What is the role of a wholesale
24 distributor?

25 A. To distribute drugs and other

1 products to the retail pharmacies and doctors
2 and anyone else that has a need for them, if
3 it's registered, if it's a controlled
4 substance.

5 Q. So distributors and wholesalers
6 sell more than just controlled substances?

7 A. Yes.

8 Q. A whole variety of products?

9 A. Yes.

10 Q. Do you understand the use of
11 the term "distributors" and "wholesalers," do
12 you use that interchangeably, or do you think
13 of those as being different words?

14 A. Interchangeable.

15 Q. Do distributors sell
16 pharmaceutical products directly to patients?

17 A. No.

18 Q. So they sell to other
19 registrants within the supply chain, whether
20 it's a retail pharmacy, a hospital customer,
21 a physician, et cetera, right?

22 A. Correct.

23 Q. So prescriptions are written by
24 doctors?

25 MR. BENNETT: Objection. Form.

1 QUESTIONS BY MS. MCCLURE:

2 Q. In your knowledge?

3 A. Among others.

4 Q. Other health care professionals
5 write a prescription, correct?

6 A. Correct.

7 Q. And then a patient takes that
8 prescription generally to a pharmacy or to
9 some other entity who is a registered -- if
10 it's a controlled substance within the supply
11 chain?

12 A. Yes.

13 Q. But not a wholesaler or a
14 distributor?

15 A. Correct.

16 Q. And so an order that a
17 wholesaler or a distributor receives from,
18 say, a pharmacy is generally a bulk order,
19 correct?

20 A. Yes.

21 Q. It's not intended to be -- it's
22 not as if a pharmacy places an order to fill
23 a specific person's prescription most
24 commonly, right?

25 A. Correct.

1 Q. Instead, the pharmacy or the
2 person ordering from the wholesaler has
3 grouped together an anticipated need for a
4 particular medication, and they order that in
5 bulk from a distributor, right?

6 MR. BENNETT: Objection. Form.

7 THE WITNESS: Correct.

8 QUESTIONS BY MS. MCCLURE:

9 Q. So an order is not being filled
10 in response to a particular patient's
11 prescription?

12 A. Not normally.

13 Q. Is it your understanding that
14 distributors do not see prescription-level
15 data in the ordinary course of doing their
16 day-to-day business of filling orders placed
17 by other -- by their customers?

18 MR. BENNETT: Objection. Form.

19 THE WITNESS: They may see
20 prescription-level data when they're
21 establishing new customers or when
22 they're reviewing what's going on at a
23 pharmacy, but not when filling every
24 order.

25

1 QUESTIONS BY MS. MCCLURE:

2 Q. In your experience,
3 distributors conduct due diligence on new
4 customers that they're considering bringing
5 on board, correct?

6 A. Yes.

7 Q. And is it in that context that
8 they may see some prescription-level data?

9 A. That's one of the reasons they
10 would.

11 Q. And how would the distributor
12 obtain that data in that new customer
13 situation?

14 A. By visiting the pharmacy and
15 asking to see information about how many
16 prescriptions, what drugs, frequency, that
17 kind of thing.

18 Q. So they would request it?

19 A. Yes.

20 Q. And then you also mentioned
21 that in a, what I will call, ongoing due
22 diligence situation when a customer is
23 already a customer and you're evaluating
24 whether there's some concern or problem with
25 that customer, a distributor may obtain

1 prescription-level data?

2 A. Correct.

3 Q. During your time at DEA, you
4 became familiar with the regulation regarding
5 the identification and reporting of
6 suspicious orders?

7 A. Yes.

8 Q. To your knowledge, has that
9 regulation changed since it was issued or
10 promulgated?

11 A. Not that I'm aware of.

12 Q. Is that something that you
13 believe you would have been aware of in your
14 course of employment at DEA and your
15 subsequent employment?

16 A. Probably.

17 (Mapes Exhibit 3 marked for
18 identification.)

19 QUESTIONS BY MS. MCCLURE:

20 Q. Okay. I'll hand you what's
21 been marked as 3.

22 If you could take a look at
23 that and let me know when you've had a chance
24 to look through it.

25 A. I've reviewed it.

1 Q. So when we're talking about the
2 regulation regarding to the identification
3 and reporting of suspicious orders, which
4 section of this Exhibit 3 are we talking
5 about?

6 A. Suspicious orders ends in
7 1301.74(b).

8 Q. And 1301.74(b) defines a
9 suspicious order to include orders of unusual
10 size, orders deviating substantially from a
11 normal pattern and orders of unusual
12 frequency, right?

13 A. Yes.

14 Q. Does the regulation explain to
15 a registrant how to identify an order of
16 unusual size?

17 MR. BENNETT: Objection. Form.

18 THE WITNESS: It does not.

19 QUESTIONS BY MS. MCCLURE:

20 Q. Does the regulation explain to
21 a registrant how to identify an order of
22 unusual frequency?

23 MR. BENNETT: Objection. Form.

24 THE WITNESS: It does not.

25

1 QUESTIONS BY MS. MCCLURE:

2 Q. Does the regulation explain to
3 a registrant how to identify an order that
4 deviates substantially from a normal pattern?

5 MR. BENNETT: Objection. Form.

6 THE WITNESS: It does not.

7 QUESTIONS BY MS. MCCLURE:

8 Q. Registrants are responsible for
9 designing their own suspicious order
10 monitoring systems; is that correct?

11 A. It is.

12 Q. Is a registrant to take into
13 account considerations that are unique to
14 them in designing such a system, for example,
15 their customer base?

16 A. Yes.

17 Q. So would one registrant
18 potentially have a different-looking or
19 different nature of a customer base than
20 another registrant?

21 A. Yes.

22 Q. Is it possible that those
23 registrants would then have designed
24 different suspicious order monitoring
25 systems?

1 A. It's possible.

2 Q. Is there a holy grail or
3 articulated DEA model standard for what
4 constitutes a suspicious order?

5 MR. BENNETT: Objection. Form.

6 THE WITNESS: Not that I'm
7 aware of.

8 QUESTIONS BY MS. MCCLURE:

9 Q. And you've spent your 30-year
10 career in DEA in diversion-related roles?

11 A. Yes.

12 Q. Does DEA define for registrants
13 what essential features are that every
14 suspicious order monitoring system must have
15 to be compliant?

16 MR. BENNETT: You can answer.

17 THE WITNESS: They may talk
18 with industry or with industry
19 associations about those kind of
20 things or answer specific questions
21 from a registrant.

22 QUESTIONS BY MS. MCCLURE:

23 Q. So in your experience, DEA may
24 answer a specific question from a registrant
25 about a possible feature that that registrant

1 is considering for its suspicious order
2 monitoring system and provide information to
3 that registrant as to whether that feature
4 would be compliant --

5 MR. BENNETT: Objection.

6 QUESTIONS BY MS. MCCLURE:

7 Q. -- with the Controlled
8 Substances Act?

9 MR. BENNETT: Objection.

10 Incomplete hypothetical.

11 You can answer.

12 THE WITNESS: Yes.

13 QUESTIONS BY MS. MCCLURE:

14 Q. Tell me more about what you
15 know about that.

16 A. If a registrant asks a specific
17 question, if having a particular part of a
18 system is appropriate, they could give their
19 opinion about whether that's appropriate as
20 part of a system.

21 Q. But does DEA mandate that
22 certain features must be included by every
23 registrant within suspicious order monitoring
24 systems?

25 A. No.

1 Q. So, for example, in your
2 experience, would DEA instruct registrants
3 that to be compliant, a suspicious order
4 monitoring system must compare orders to
5 orders received from other similarly sized
6 pharmacies within a geographic area?

7 MR. BENNETT: Objection.

8 Vague. Incomplete hypothetical.

9 Scope.

10 You can answer within the
11 limits of scope letter, if you can.

12 THE WITNESS: DEA looks at them
13 one registrant at a time, so they're
14 not telling them to compare them with
15 other registrants. Looking at each
16 registrant uniquely.

17 QUESTIONS BY MS. MCCLURE:

18 Q. And is that because DEA affords
19 registrants the discretion to design a
20 compliant suspicious order monitoring?

21 MR. BENNETT: Objection.

22 Scope.

23 You are not here to speak on
24 behalf of DEA. You may speak in your
25 personal capacity.

1 THE WITNESS: I'm now confused
2 about what the question was.

3 QUESTIONS BY MS. MCCLURE:

4 Q. No problem.

5 In your experience, DEA affords
6 registrants the discretion to design a
7 suspicious order monitoring system that is
8 effective?

9 MR. BENNETT: Same objection.
10 You may answer --

11 THE WITNESS: Yes.

12 MR. BENNETT: -- in your
13 personal capacity.

14 QUESTIONS BY MS. MCCLURE:

15 Q. And so if I have this correct,
16 DEA will advise as to a specific feature when
17 requested, when information is requested by a
18 registrant, but will not put together a list
19 of the mandated features that every
20 suspicious order monitoring system must
21 include in order to be compliant.

22 Do I have that correct?

23 A. I have talked with registrants
24 in the past about specific aspects of their
25 system in giving them advice. I'm not sure

1 if DEA is currently doing that or not.

2 Q. When you say you have "talked
3 with registrants in the past about specific
4 aspects of their system in giving them
5 advice," is that in your capacity at DEA?

6 A. Yes.

7 Q. But in your experience, DEA
8 does not publish, put forth, any sort of list
9 of mandated requirements that must be in a
10 suspicious order monitoring system in order
11 for that system to be effective or compliant?

12 A. I haven't seen one.

13 Q. If you haven't seen a written
14 list, are you aware of some informal list --

15 A. No.

16 Q. -- of features --

17 A. No, I'm not.

18 Q. -- that DEA mandates be
19 included in every suspicious order monitoring
20 system?

21 MR. BENNETT: Let her finish
22 the question first.

23 THE WITNESS: Okay.

24 No.

25

1 QUESTIONS BY MS. MCCLURE:

2 Q. If a former DEA diversion
3 investigator identified a number of features
4 that must be included in a suspicious order
5 monitoring system in order for it to be
6 compliant, would that match with your
7 experience at DEA?

8 MR. BENNETT: Objection.

9 Scope. Incomplete hypothetical and
10 vague.

11 You can answer in your personal
12 capacity but not on behalf of DEA.

13 THE WITNESS: I'm not aware of
14 any that we've had, so it wouldn't be
15 consistent with what I have seen.

16 QUESTIONS BY MS. MCCLURE:

17 Q. It would not be consistent with
18 what you've seen or experienced in your time
19 at DEA?

20 A. That's correct.

21 Q. Do you agree that there -- that
22 the review of an order to determine whether
23 it is suspicious or not is a subjective one?

24 MR. BENNETT: Objection.

25 Vague.

1 You can answer.

2 THE WITNESS: Yes.

3 QUESTIONS BY MS. MCCLURE:

4 Q. Meaning that the individual or
5 entity reviewing that order takes into
6 account the totality of the circumstances and
7 makes a determination as to whether that
8 order is or is not a suspicious order; is
9 that right?

10 A. Yes.

11 Q. Have you heard the phrase
12 "totality of circumstances" previously in the
13 course of your tenure at DEA?

14 A. I have.

15 Q. Do you recall in what context
16 you've heard that?

17 A. Discussing suspicious orders.

18 Q. And is that a phrase that's
19 used commonly within DEA or the industry
20 regarding reporting suspicious orders?

21 A. I don't know that it's common.

22 Q. Regardless -- okay.

23 You've heard the term "totality
24 of the circumstances" before?

25 A. Yes.

1 Q. Okay. And as we discussed
2 previously, each customer -- or I'm sorry,
3 each registrant has a different customer
4 base, right?

5 A. Correct.

6 Q. No customer -- or no
7 registrant's customer base will exactly match
8 that of another registrant?

9 A. Correct.

10 Q. And so the information
11 available to one registrant regarding whether
12 an order -- let me strike that and start
13 over.

14 The information available to
15 one registrant about a particular order and
16 the customer placing it might be different
17 than the information available to another
18 registrant?

19 A. And you're using -- I don't
20 quite understand the question yet.

21 Q. Okay. We've talked about how
22 registrants have different customer bases,
23 right?

24 A. Yes.

25 Q. And so when a registrant or a

1 wholesaler in this case is evaluating an
2 order and trying to determine whether it's
3 suspicious or not --

4 Are you with me?

5 A. Uh-huh. Yes.

6 Q. -- the information that
7 Registrant A may have about that order or
8 that customer may be different than the
9 information that is available to
10 Registrant B?

11 MR. BENNETT: Objection.

12 Vague. Incomplete hypothetical.

13 THE WITNESS: Yes, they may be
14 different.

15 QUESTIONS BY MS. MCCLURE:

16 Q. Each registrant conducts its
17 own due diligence?

18 A. They should.

19 Q. To your knowledge, they should,
20 right?

21 A. Yes.

22 Q. So do registrants, in your
23 experience, share due diligence files?

24 A. No.

25 Q. Does the regulation -- I'm

1 looking back at Mapes Exhibit 3 -- define the
2 form or format that a suspicious order report
3 must take?

4 A. It does not.

5 Q. Does it say what information is
6 supposed to be provided to DEA?

7 A. No, it doesn't.

8 Q. Does the regulation in Mapes
9 Exhibit 3 say anything about whether a
10 registrant can ship a suspicious order?

11 MR. BENNETT: Objection. Form.

12 THE WITNESS: No, it doesn't.

13 QUESTIONS BY MS. MCCLURE:

14 Q. And this section of the
15 regulation, 1301.74(b), it has not changed
16 since 1971?

17 A. I'm not aware of any changes.

18 Q. Are you familiar with excessive
19 purchase reports?

20 A. Yes.

21 Q. What are they?

22 A. Reports that are sent by
23 wholesalers of purchases of controlled
24 substances that they, after the fact, think
25 may be excessive.

1 Q. Was the submission of excessive
2 purchase reports, in your experience,
3 standard practice in the industry?

4 A. It was.

5 Q. Was there a particular time
6 that you believe, in your experience, it was
7 standard practice in the industry to submit
8 those?

9 A. From the time I started with
10 DEA in 1977 until we had the meetings with
11 the individual wholesalers, that was the --
12 the standard practice, to submit those.

13 Q. And in your experience, DEA
14 reviewed those reports as compliant with the
15 Controlled Substances Act?

16 MR. BENNETT: Objection.

17 Scope.

18 This is not a 30(b)(6) witness
19 who can speak on behalf of DEA.

20 You may answer in your personal
21 capacity within the limits of the
22 scope letter.

23 THE WITNESS: Yeah, I viewed
24 those as compliant with the regulation
25 for suspicious orders.

1 QUESTIONS BY MS. MCCLURE:

2 Q. And in your experience of
3 conducting audits of distribution centers,
4 that was one of your roles as a diversion
5 investigator, right?

6 A. Yes.

7 Q. Conducting audits?

8 A. Yes.

9 Q. And as a group supervisor, you
10 would oversee diversion investigators who
11 were conducting audits?

12 A. That's correct.

13 Q. And that would include a review
14 of their suspicious order monitoring systems?

15 A. That's correct.

16 Q. Including the formats that they
17 were using to submit and how they were
18 identifying and reporting suspicious orders
19 to DEA?

20 A. Correct.

21 Q. And in the course of your role
22 as a diversion investigator and a group
23 supervisor, you accepted these excessive
24 purchase reports as compliant with the
25 Controlled Substances Act?

1 MR. BENNETT: You can answer
2 that.

3 THE WITNESS: Yes.

4 QUESTIONS BY MS. MCCLURE:

5 Q. You don't recall saying to
6 anyone, "Hey, you can't submit these kinds of
7 documents" in the course of your roles as a
8 diversion investigator or a group supervisor?

9 MR. BENNETT: Objection.
10 Scope.

11 You are not authorized to
12 disclose information regarding any
13 specific DEA investigations or
14 activities.

15 You may answer this question
16 yes or no on whether you remember
17 saying that.

18 THE WITNESS: Can you repeat
19 the question?

20 QUESTIONS BY MS. MCCLURE:

21 Q. I can.

22 You don't recall saying to
23 anyone, a registrant, for example, "You can't
24 submit these kinds of excessive purchase
25 reports and still be compliant with the

1 Controlled Substances Act" in your role as a
2 diversion investigator or a group supervisor?

3 MR. BENNETT: Same objection.

4 You can answer.

5 THE WITNESS: No, I don't
6 remember saying that.

7 QUESTIONS BY MS. MCCLURE:

8 Q. And we've been talking about
9 excessive purchase reports, but sometimes
10 people -- registrants would call them by
11 different names.

12 Do you recall that, or in your
13 experience were they all called excessive
14 purchase reports?

15 A. Generally referred to as
16 excessive purchase reports. Could be called
17 suspicious order reports.

18 Q. And were they generally in a
19 similar format across the industry?

20 MR. BENNETT: Objection. Form.
21 Vague.

22 You can answer it.

23 QUESTIONS BY MS. MCCLURE:

24 Q. Do you understand my question?

25 A. Yes.

1 They were in different formats
2 depending on the company that was sending
3 them. Some would send computer printouts.
4 Some would send copies of invoices. So there
5 are different ways that they were sent.

6 Q. They generally provided the
7 same kind of information?

8 A. Yes.

9 Q. About purchases and sales that
10 had already happened?

11 A. Correct.

12 Q. And DEA accepted those?

13 MR. BENNETT: Objection.

14 QUESTIONS BY MS. MCCLURE:

15 Q. In your personal experience?

16 MR. BENNETT: Scope.

17 You're not here as a 30(b)(6)
18 witness to answer on behalf of DEA.

19 You may answer in your personal
20 capacity of what you did.

21 THE WITNESS: Yes, we accepted
22 those.

23 MR. LANIER: Did he say -- I'm
24 trying to be careful -- "we" after you
25 told him not to speak for the DEA but

1 himself?

2 MS. MCCLURE: Mark --

3 MR. BENNETT: I believe that
4 was his testimony, yes.

5 MS. MCCLURE: That is his
6 testimony.

7 MR. LANIER: Okay.

8 QUESTIONS BY MS. MCCLURE:

9 Q. So in your personal experience,
10 were you the only one who accepted these?

11 MR. BENNETT: You can answer.

12 THE WITNESS: No other groups
13 accepted the same type of reports.

14 QUESTIONS BY MS. MCCLURE:

15 Q. So saying "we" is referring to
16 you and those other groups, right?

17 A. The others that I was
18 supervising at the time.

19 Q. So in the course of your role
20 as a diversion investigator, as well as the
21 time when you acted as a group supervisor and
22 had diversion investigators reporting to you,
23 yes?

24 A. Yes.

25 Q. Are you aware of DEA

1 headquarters approving particular suspicious
2 order monitoring systems submitted by a
3 registrant at any time in your experience at
4 DEA?

5 MR. BENNETT: Objection. Form.
6 You can answer.

7 THE WITNESS: I do recall one
8 time that I was in headquarters and we
9 received a letter from a wholesaler
10 about their suspicious order
11 monitoring program, and we told them
12 that it did comply with the
13 requirements in the regulation.

14 QUESTIONS BY MS. MCCLURE:

15 Q. What role were you in when you
16 received that letter?

17 A. The deputy chief of liaison and
18 policy.

19 Q. And when you say "we" received
20 that letter, were you personally involved
21 with the approval of that suspicious order
22 monitoring system?

23 MR. BENNETT: You can answer.

24 THE WITNESS: Yes.
25

1 QUESTIONS BY MS. MCCLURE:

2 Q. Who else is encompassed within
3 that "we" that you've provided?

4 A. A staff coordinator that
5 reviewed the incoming correspondence from the
6 company, drafted the response to the company
7 and then sent it to me for approval, or in
8 this case signature, to send it to the
9 company.

10 Q. Did you sign that?

11 A. Yes.

12 Q. And what company was that?

13 A. AmerisourceBergen.

14 Q. Can you think of any other
15 instances in which you have a personal
16 recollection of DEA's approval of a
17 suspicious order monitoring system?

18 A. No, I cannot.

19 (Mapes Exhibit 4 marked for
20 identification.)

21 QUESTIONS BY MS. MCCLURE:

22 Q. I'm going to mark an exhibit as
23 4. This is a series of letters exchanged,
24 and they're all going to be amalgamated as
25 one exhibit for today.

1 If you could take a look
2 through those letters and let me know when
3 you've had a chance to review them.

4 A. Okay. I've generally reviewed
5 them.

6 Q. Now, when I was previously
7 asking you about approvals, you recalled a
8 situation in which you had signed a letter to
9 AmerisourceBergen.

10 Is that a different set of
11 letters or a letter that is not this set
12 that's marked as Exhibit 4?

13 A. Yes, it's not included in here.

14 Q. Okay. So let me back up.

15 This set of letters is dated in
16 the '96 to '98 time period, right? Over a
17 time span through '96, '97, and then ending
18 in June 23rd -- I'm sorry, July 23, '98,
19 right?

20 A. Correct.

21 Q. And these are exchanged between
22 the Department of Justice, DEA Enforcement
23 Administration -- I'm sorry, the Drug
24 Enforcement Administration and Chris
25 Zimmerman at Bergen, right?

1 A. Correct.

2 Q. So not AmerisourceBergen
3 because this predated the merger with
4 Amerisource.

5 Are you aware of that?

6 MR. BENNETT: Objection. Form.

7 THE WITNESS: Could you restate
8 the question?

9 QUESTIONS BY MS. MCCLURE:

10 Q. Yes, I can.

11 As of 1998, Bergen was a
12 separate company from Amerisource.

13 Do you know that, or am I
14 telling you --

15 A. Yes.

16 Q. You are aware of that?

17 A. Yes, I am.

18 Q. Okay. You previously told me
19 you had signed a letter approving a system
20 that AmerisourceBergen had.

21 Was that a later letter that
22 was subsequent to the 2001 merger between
23 Amerisource and Bergen, or was that a letter
24 that you recall being part of this exchange
25 with Bergen?

1 A. It was subsequent to this. It
2 was after the merger of Amerisource and
3 Bergen.

4 Q. Do you recall the approximate
5 time period of the approval letter that you
6 recall signing regarding AmerisourceBergen's
7 suspicious order monitoring program that had
8 to have been after 2001, which was the merger
9 of those two companies?

10 MR. BENNETT: Objection. Form.

11 THE WITNESS: No, I don't
12 recall the time frame.

13 QUESTIONS BY MS. MCCLURE:

14 Q. Can we agree it would have --
15 you recall it being AmerisourceBergen, so
16 after the merger in 2001, if I'm telling you
17 the correct date of the merger, right?

18 A. Yes.

19 Q. Would it have been prior to
20 2007, which is when there was a settlement
21 and release agreement executed between DEA
22 and AmerisourceBergen?

23 A. Yes.

24 Q. So sometime in between 2001 and
25 2007, you recall a different exchange of

1 letters that is not reflected here in Mapes
2 Exhibit 4 in which you signed a document, a
3 letter, approving AmerisourceBergen's
4 suspicious order monitoring system?

5 A. That's correct.

6 Q. In your experience at DEA,
7 would letters approving suspicious order
8 monitoring systems be things that were
9 retained, kept by DEA?

10 MR. BENNETT: Objection.

11 Scope. Calls for speculation.

12 You can answer.

13 THE WITNESS: Generally all
14 correspondence was retained.

15 QUESTIONS BY MS. MCCLURE:

16 Q. Okay. So is it reasonable to
17 think that a letter approving a suspicious
18 order monitoring system, of which you can
19 only recall one instance of it happening,
20 would be something that would be retained by
21 DEA?

22 MR. BENNETT: Objection.

23 Scope. Calls for speculation.

24 You can answer.

25 THE WITNESS: Yes.

1 QUESTIONS BY MS. MCCLURE:

2 Q. So you don't recall when in
3 between '01 and '07 this would have been?

4 A. It would have been while I was
5 deputy chief of the liaison and policy
6 section, so it would have been during that
7 time frame.

8 Q. And would you be so kind as to
9 remind me to the best of your recollection
10 when that time frame was?

11 MR. BENNETT: Objection. Asked
12 and answered.

13 MS. MCCLURE: Yeah, it is asked
14 and answered.

15 MR. BENNETT: You can answer.

16 MS. MCCLURE: I just don't
17 remember.

18 MR. BENNETT: You can answer
19 again.

20 QUESTIONS BY MS. MCCLURE:

21 Q. Was that approximate --

22 MR. BENNETT: Wait a second.

23 MS. MCCLURE: Okay.

24 MR. BENNETT: You have a
25 question pending.

1 MS. MCCLURE: Yeah, I have a
2 question pending, you're right.

3 THE WITNESS: I can't recall
4 the exact dates of that.

5 QUESTIONS BY MS. MCCLURE:

6 Q. But that was immediately prior
7 to you becoming chief of the E-Commerce
8 section in 2004?

9 A. No, it was immediately prior to
10 me becoming chief of the administrative
11 section.

12 Q. Planning and resources?

13 A. The planning and resources
14 section.

15 Q. And you did that from
16 approximately 2003 to 2004 as to your prior
17 testimony?

18 A. Correct.

19 Q. So can we limit the time period
20 for when this letter would have been as
21 sometime between 2001 and then 2003 when you
22 took over the chief of the planning and
23 resources section?

24 A. Yes.

25 Q. Division? Section?

1 A. Section.

2 Q. Section.

3 Okay. So between '01 and '03.

4 Understanding you've been gone
5 from DEA since 2007, do you have a copy of
6 this letter in your personal possession?

7 A. No.

8 Q. Do you recall to whom you sent
9 this letter approving of AmerisourceBergen's
10 suspicious order monitoring system sometime
11 between 2001 and 2003?

12 A. To Chris Zimmerman at
13 AmerisourceBergen.

14 Q. How did that letter come about?
15 What led to you -- strike that.

16 What led to you issuing that
17 letter?

18 MR. BENNETT: Objection.

19 Scope.

20 You are not authorized to
21 disclose the internal deliberative
22 process of the Department of Justice
23 or any attorney-client communication
24 or privileged conversations.

25 To the extent you can answer

1 the question without disclosing that
2 information, you may answer.

3 THE WITNESS: It was in
4 response to a letter from
5 AmerisourceBergen.

6 QUESTIONS BY MS. MCCLURE:

7 Q. Was that letter from
8 AmerisourceBergen from Chris Zimmerman?

9 A. It was.

10 Q. Did you know Chris Zimmerman at
11 the time -- in this 2001 to 2003 time period?

12 A. No.

13 Q. And you said you recall a staff
14 coordinator passing that letter on to you for
15 evaluation?

16 A. To review, yes.

17 Q. What do you recall, if
18 anything, doing to evaluate the request?

19 A. I don't --

20 MR. BENNETT: Objection. Same
21 instruction regarding the internal
22 deliberative process.

23 You can answer.

24 THE WITNESS: I don't recall.

25

1 QUESTIONS BY MS. MCCLURE:

2 Q. But you do recall that the end
3 conclusion that you reached was to issue a
4 letter back to Chris Zimmerman at
5 AmerisourceBergen approving of the suspicious
6 order monitoring system?

7 A. That's correct.

8 Q. The letters I showed you, which
9 are Mapes Exhibit 4, do you recall whether
10 you reviewed those letters in evaluating
11 Chris Zimmerman's 2001 to 2003, somewhere in
12 that time period, letter he sent to you on
13 behalf of AmerisourceBergen?

14 MR. BENNETT: Objection.

15 Scope.

16 You can answer that question
17 yes or no only, if you remember.

18 THE WITNESS: I don't recall.

19 QUESTIONS BY MS. MCCLURE:

20 Q. Do you recall if you were aware
21 of these letters, meaning Mapes Exhibit 4,
22 when you evaluated the subsequent 2001 to
23 2003 request from Chris Zimmerman for
24 approval of the AmerisourceBergen Drug
25 Corporation suspicious order monitoring

1 system?

2 A. I don't recall seeing these
3 when I was looking at that other letter.

4 Q. Meaning that you don't know if
5 you did or not or -- let me ask you.

6 You don't know if you reviewed
7 these letters or not when you evaluated that
8 letter?

9 A. I don't believe that I did, but
10 I don't know.

11 Q. You don't know for certain?

12 A. That's correct.

13 Q. Is this the first time that
14 you've ever seen the letters that are
15 reflected as Mapes Exhibit 4, when I've shown
16 them to you, or have you seen them prior to
17 today?

18 A. I don't recall seeing any of
19 these letters before.

20 Q. It's possible you may have in
21 the course of your time at DEA or in
22 consulting with AmerisourceBergen, but
23 sitting here today, you don't recall; is that
24 correct?

25 MR. BENNETT: Objection.

1 You can answer.

2 Form.

3 You can answer.

4 THE WITNESS: Yeah, I don't
5 recall seeing them before.

6 QUESTIONS BY MS. MCCLURE:

7 Q. Did you take over the chief of
8 liaison and policy section role from Patricia
9 Good?

10 A. No.

11 Q. Who was previously in that role
12 when you took it over?

13 A. I was the deputy chief of
14 liaison and policy working with Patricia.

15 Q. I apologize.

16 So in this 2001 to 2003 time
17 frame when you issued this letter approving
18 of AmerisourceBergen's suspicious order
19 monitoring system, at that time you were
20 reporting to Patricia Good?

21 A. Yes.

22 Q. Okay. Was Thomas Gitchel the
23 immediate prior chief of liaison and policy
24 prior to Patricia Good, to your knowledge?

25 A. Yes, he was.

1 MS. MCCLURE: Go off the
2 record.

3 VIDEOGRAPHER: Going off the
4 record. The time is 11:52.

5 (Off the record at 11:52 a.m.)

6 MR. LANIER: And the reason
7 I've asked to go back on the record is
8 because you are asking for production
9 of this letter that you clearly had
10 some indication, as you asked your
11 questions, might exist. You have
12 asked for the letter, and it has not
13 been produced by them.

14 But by my recollection, and I'm
15 having our people search diligently,
16 it's not been presented by y'all,
17 either.

18 MS. MCCLURE: Well, agreed.

19 SPECIAL MASTER COHEN: Why
20 don't we --

21 MR. LANIER: If you've got that
22 letter --

23 MS. MCCLURE: I thought he was
24 finished.

25 MR. LANIER: If you've got that

1 letter, you have not produced it prior
2 to this deposition. That's
3 outrageous.

4 MS. MCCLURE: Mr. Lanier, I,
5 sitting here today, am not aware of
6 that letter.

7 To the extent that you believe
8 that my questions, quote, clearly have
9 some indication that I'm aware of the
10 letter existing, that is false.

11 MR. LANIER: Okay. As long as
12 you'll state on the record you had no
13 clue that that letter exists --

14 MS. MCCLURE: Didn't I just do
15 that?

16 MR. LANIER: That's fine. I'll
17 accept that from you.

18 And I'll also accept that you
19 think your client's done a diligent
20 search and your client doesn't have
21 the letter or they sure would have
22 produced it because it's absolutely
23 subject to a lot of requests.

24 MS. MCCLURE: Do you think that
25 that letter would have been in the

1 best interests of my client to produce
2 had we located it?

3 SPECIAL MASTER COHEN: Don't
4 need to argue amongst each other.

5 MS. MCCLURE: Regardless,
6 Mr. Bennett, as we discussed off the
7 record and we will now memorialize on
8 the record, the defendants -- I do not
9 have the Touhy request in front of me.
10 Nevertheless, I believe it's fairly
11 obvious and not disputable that such
12 an approval letter of
13 AmerisourceBergen's 2000 -- some --
14 such an approval letter from DEA to
15 AmerisourceBergen sometime between the
16 2001-2003 time period, executed and
17 signed by Mr. Mapes, as he has
18 testified here today, would be
19 included within the scope of the
20 requests that the defendants have
21 made.

22 I would request that DEA search
23 for and produce that letter to the
24 extent it can be located.

25 Mr. Mapes has testified that in

1 his experience such a letter would
2 have been retained by DEA, similar to
3 the letter that DEA did produce to
4 AmerisourceBergen dated July 23, 1998,
5 issued to Bergen Brunswig and having a
6 subject at the bottom of it called
7 "Approved Suspicious Order Monitoring
8 System, US-DEA-00025671."

9 I would also request that for
10 the convenience of the witness that
11 search be conducted promptly, because
12 I will state now on the record that to
13 the extent the letter is produced
14 subsequent to Mr. Mapes deposition,
15 I'm in the unfortunate position, and
16 apologize to Mr. Mapes for doing this,
17 but we would request that his
18 deposition, to the extent it's not
19 produced today or tomorrow, be
20 reconvened to -- for the purpose of
21 questioning regarding that letter.

22 MR. BENNETT: Counsel, I can
23 tell you that DEA did do a diligent
24 search for records responsive to the
25 requests that, in particular, the

1 defense sent. It has produced a
2 number of documents.

3 I have never seen the document
4 that was Mr. Mapes referenced, and to
5 the best of my knowledge, that was
6 never collected in the DEA's search
7 process and was not being withheld.

8 I would ask DEA to do a search.

9 I do want the parties to
10 understand that there are retention
11 schedules and documents are, in the
12 normal course of a government agency,
13 not retained beyond certain periods of
14 time.

15 I do not know whether a
16 retention schedule would have applied
17 to this document and whether or not
18 it -- how long it would have been
19 retained. But I will ask DEA to look
20 for the document, and we'll make a
21 determination whether or not it can be
22 released or whether it needs to be
23 redacted and released.

24 MS. MCCLURE: Regardless --

25 MR. BENNETT: I will make that

1 at our next break.

2 MS. MCCLURE: Regardless, what
3 I would ask in terms of whether the
4 document can be produced or would have
5 to be redacted, what I do ask is if
6 their document located and it is being
7 withheld, in other words, not just
8 redacted and produced in redacted
9 form, if the document is being
10 withheld, we would ask that you
11 confirm the existence of the document
12 and explain what the reason is --

13 MR. BENNETT: Of course.

14 MS. MCCLURE: -- that you
15 believe it should be withheld, not
16 simply withhold the document.

17 MR. BENNETT: Of course.

18 Yes, I mean, I think we have to
19 do a privilege log for any documents
20 we withhold, so...

21 But at our next break, I will
22 send an e-mail to DEA to see if they
23 can locate it.

24 MS. MCCLURE: Thank you.

25 Mr. Mapes, apologies for the --

1 VIDEOGRAPHER: Go back on the
2 video?

3 MS. MCCLURE: Yes, let's go
4 back on video.

5 VIDEOGRAPHER: Going back on
6 video. Beginning of Media File 3.
7 The time is 11:59.

8 QUESTIONS BY MS. MCCLURE:

9 Q. Mr. Mapes, thank you, and
10 apologies for the -- as we said, sometimes
11 there will be attorney sidebars and
12 discussions, so thank you for your patience
13 while we work through that.

14 A. Okay.

15 Q. Do you remember anything about
16 the program that AmerisourceBergen submitted
17 to you for -- with that request for approval
18 in that 2001 to 2003 time frame?

19 A. No, I don't remember the
20 details of it.

21 Q. Sitting here today and having
22 reviewed Mapes Exhibit 4, which discusses --
23 well, let's turn to the last document within
24 that set of documents, which begins -- the
25 little Bates numbers on the bottom say

1 319751.

2 A. Yes.

3 Q. That's a letter from Chris
4 Zimmerman at Bergen to Tom Gitchel dated
5 September 30, 1996, correct?

6 A. Yes, it is.

7 Q. And we don't need to read
8 through the entire letter, but is it your
9 understanding generally, having reviewed this
10 letter, that at the time Bergen was doing two
11 things to report a suspicious order; one was
12 monthly excessive purchase reports, correct?

13 MR. BENNETT: Objection. Form.
14 This witness lacks personal knowledge.
15 He said he'd never seen this letter
16 before.

17 QUESTIONS BY MS. MCCLURE:

18 Q. Okay. You've reviewed this
19 letter when I handed it to you a few minutes
20 ago, correct?

21 A. Correct.

22 Q. This letter -- I'm trying to
23 avoid having to go through the whole letter
24 and use up a lot of time, everyone's time,
25 here. But essentially there were two methods

1 that this letter discusses, whether you've
2 seen it before or not, that Bergen was using
3 in 1998 to report and identify suspicious
4 orders to DEA.

5 MR. BENNETT: Same -- I'm
6 sorry.

7 QUESTIONS BY MS. MCCLURE:

8 Q. One of those was the provision
9 of monthly excessive purchase reports,
10 correct?

11 MR. BENNETT: Objection. Form.
12 Lack of personal knowledge.

13 QUESTIONS BY MS. MCCLURE:

14 Q. And that's referenced on
15 page 1, paragraph 2?

16 MR. BENNETT: You can answer
17 the last question.

18 THE WITNESS: Yes, it does talk
19 about excessive purchase reports being
20 sent.

21 QUESTIONS BY MS. MCCLURE:

22 Q. And then in the next paragraph
23 it also talks about phone calls placed by
24 Bergen to DEA?

25 MR. BENNETT: Objection. Form.

1 QUESTIONS BY MS. MCCLURE:

2 Q. Correct?

3 A. Yes. Yes, it does.

4 Q. And ultimately, the proposal in
5 this letter was to prepare a daily suspicious
6 order report of completed transactions that
7 would go either via fax or some other method
8 to DEA field offices.

9 Is that your understanding
10 having read this letter?

11 MR. BENNETT: Objection. Form.

12 THE WITNESS: I'm not certain
13 that they're completed orders or sales
14 or orders that they've received, from
15 what it says here.

16 QUESTIONS BY MS. MCCLURE:

17 Q. Okay. Do you recall whether
18 the letter that you approved sometime between
19 2001 and 2003 reflected daily reports going
20 to DEA field offices from AmerisourceBergen
21 of suspicious orders?

22 A. I don't recall.

23 Q. Okay. So reviewing this letter
24 does not refresh your recollection as to what
25 it was you approved sometime between 2001 and

1 2003?

2 A. No, it does not.

3 (Mapes Exhibit 5 marked for
4 identification.)

5 QUESTIONS BY MS. MCCLURE:

6 Q. Okay. This is Mapes 5. It's a
7 single-page document.

8 Now, Mr. Mapes, on the previous
9 document I handed -- oh, let me know when
10 you've had a chance to review it. Apologies.

11 A. Okay.

12 Q. So having done a comparison,
13 this document is, I believe, the DEA's
14 version of the same letter that's attached as
15 Mapes Exhibit 4. It's produced by the DEA,
16 which we can tell because at the bottom it
17 says US-DEA-00025671.

18 Do you see that at the bottom?

19 A. Yes, I do.

20 Q. And the difference is that at
21 the bottom there's a blacked-out box which is
22 a redaction implemented by DEA, and then the
23 subject added there is "approved suspicious
24 order monitoring system."

25 Are you familiar with these

1 subjects or notations at the bottom of DEA
2 copies of letters and communications in your
3 experience at DEA?

4 MR. BENNETT: Objection.

5 Scope.

6 You may answer that question
7 yes or no only.

8 THE WITNESS: No, I'm not.

9 MS. MCCLURE: Okay. You can
10 set that aside.

11 (Mapes Exhibit 6 marked for
12 identification.)

13 QUESTIONS BY MS. MCCLURE:

14 Q. I'm going to hand you a
15 document that is marked Mapes Exhibit 6.

16 And I just realized -- I
17 apologize for the record -- I have not been
18 reading Bates numbers in. US-DEA-00001771.

19 Take a look at that and let me
20 know when you've had a chance to review it.

21 A. I've reviewed it.

22 Q. Have you seen this document
23 before?

24 A. I have.

25 Q. Did you see this document, to

1 the best of your recollection,
2 contemporaneously with it being issued in or
3 around December of 2007, or have you seen
4 this document more -- only more recently?

5 A. Only more recently.

6 Q. By "only more recently," is
7 that referencing the two meetings that you
8 had with DEA counsel to both give information
9 to them and prepare for this deposition, or
10 did you see this letter in connection with
11 your summer and fall 2018 meeting with
12 plaintiffs' counsel?

13 MR. BENNETT: Objection. Form.

14 THE WITNESS: I don't recall
15 seeing it with meetings with plaintiff
16 counsel.

17 I didn't see it at DEA because
18 I was retired before the letter was
19 sent out.

20 I did see it yesterday in
21 preparation for the deposition.

22 QUESTIONS BY MS. MCCLURE:

23 Q. To the best of your
24 recollection then, the first time you recall
25 seeing this letter was yesterday?

1 A. No, I've seen it other times
2 between the time I retired and yesterday.

3 Q. Do you recall how you saw it
4 those other times?

5 A. It was from a registrant, I
6 can't remember which one, but a registrant
7 that sent it to me that had received it from
8 DEA.

9 Q. Do you recall whether it would
10 have been shortly after this letter was sent
11 in the early course of your consulting work,
12 or was it later than that, if you can --

13 A. It was later than that.

14 Q. So it's fair to say from your
15 answers that you, it seems, did not review
16 this letter prior to it being issued, say, in
17 the last months of your tenure at DEA?

18 MR. BENNETT: Objection.

19 Scope.

20 You're not authorized to
21 disclose the internal deliberations of
22 DEA.

23 You may answer that question
24 yes or no only, whether you saw it
25 prior to leaving DEA, a draft.

1 THE WITNESS: No, I did not.

2 QUESTIONS BY MS. MCCLURE:

3 Q. If we look at paragraph 3 of
4 this letter, the second sentence says,
5 "Filing a monthly report of completed
6 transactions, e.g., excessive purchase report
7 or high unit purchases, end parens, does not
8 meet the regulatory requirement to report
9 suspicious orders."

10 Based on your experience at
11 DEA, was this a change in how DEA handled
12 suspicious order reporting?

13 MR. BENNETT: Objection.

14 Scope.

15 You're not here as a 30(b)(6)
16 witness to talk on behalf of DEA.

17 You may disclose your personal
18 knowledge regarding this topic from
19 your time at DEA, what you personally
20 did.

21 THE WITNESS: I believe from my
22 experience it was a change.

23 QUESTIONS BY MS. MCCLURE:

24 Q. Because previously in your
25 experience at DEA excessive purchase reports

1 had been accepted by DEA for suspicious order
2 reporting as you previously testified,
3 correct?

4 MR. BENNETT: Objection.

5 Scope. This is not a 30(b)(6) witness
6 that can answer on behalf of DEA.

7 You may answer what you
8 personally did while at DEA in
9 response to that question.

10 THE WITNESS: It was a change
11 that was started, from my experience,
12 when we had the meetings with
13 individual wholesalers, individual
14 distributors, starting in 2005.

15 QUESTIONS BY MS. MCCLURE:

16 Q. So in 2005, which you've just
17 referenced, you began talking with
18 distributors on something called the
19 Distributor Initiative?

20 A. That's correct.

21 Q. Whose idea was the Distributor
22 Initiative?

23 MR. BENNETT: Objection.

24 Scope. Objection.

25 You're not to disclose internal

1 deliberative process.

2 If you know of a person who
3 came up with the idea for a
4 Distributor Initiative, you may answer
5 who that person was.

6 THE WITNESS: I'm not sure I
7 can answer the question.

8 MR. BENNETT: Can we go off the
9 record for a minute?

10 MS. MCCLURE: Yeah.

11 VIDEOGRAPHER: We're going off
12 record. The time is 12:14.

13 (Off the record at 12:14 p.m.)

14 VIDEOGRAPHER: We're going back
15 on record. Beginning of Media File 4.
16 The time is 12:17.

17 MR. BENNETT: So the witness
18 can answer the question as far as the
19 people who came up with the idea.

20 In addition, we did discuss and
21 would prefer to wait until one o'clock
22 for the lunch break because we started
23 late this morning, and it would make
24 the afternoon very long if we go two
25 hours and then we have the rest of the

1 time in the afternoon.

2 So if the parties would agree,
3 we'd prefer to wait until -- take the
4 lunch break at one o'clock.

5 MS. MCCLURE: Provided that my
6 personal comfort situation will last
7 us until one o'clock, we can do that.

8 MR. BENNETT: Well, we can take
9 a quick break, but as far as the lunch
10 break goes, we'd rather wait.

11 If you want to take a comfort
12 break --

13 MS. MCCLURE: Okay. I would
14 like to take a five-minute comfort
15 break.

16 MR. BENNETT: So let's have his
17 answer. We'll take --

18 MS. MCCLURE: So let's have you
19 answer. We'll do five really short,
20 short, short five -- three to five
21 minutes and then go back on.

22 MR. BENNETT: And then we can
23 do a lunch break 1, 1:30, whatever.

24 MS. MCCLURE: Yeah. Exactly.

25 MR. BENNETT: All right. You

1 can answer the last question, based on
2 our conversation, as far as the name
3 of the individuals.

4 THE WITNESS: It was Kyle
5 Wright and myself that initiated that.

6 MS. MCCLURE: Okay. Quick
7 five-minute-or-less break.

8 VIDEOGRAPHER: Going off the
9 record. The time is 12:18.

10 (Off the record at 12:18 p.m.)

11 VIDEOGRAPHER: Going back on
12 the record. Beginning of Media
13 File 5. The time is 12:27.

14 QUESTIONS BY MS. MCCLURE:

15 Q. Okay. So Kyle Wright and
16 yourself initiated the Distributor
17 Initiative?

18 A. That's correct.

19 Q. Is it sometimes called the
20 distributor briefings?

21 A. Yes.

22 Q. Do you -- okay.

23 So those are interchangeable?

24 A. They are.

25 Q. And what was the reason that

1 you and Mr. Wright initiated the distributor
2 briefings?

3 MR. BENNETT: Objection.

4 Scope. Internal deliberative process.

5 You may answer why the
6 initiative was started but may not
7 give specifics of the deliberations.

8 THE WITNESS: It was started in
9 response to the Internet pharmacy
10 issue.

11 QUESTIONS BY MS. MCCLURE:

12 Q. What was the Internet pharmacy
13 issue?

14 A. That was when websites were
15 starting to offer their service to patients,
16 doctors and pharmacies to put the three
17 together so that patients could get a
18 prescription filled by a pharmacy after
19 completing a questionnaire on a website and
20 getting that approved by a doctor for a
21 prescription, and a pharmacy getting the
22 prescriptions and filling those and sending
23 them to the patients.

24 Q. So DEA's concern, am I right,
25 that there was not a doctor-patient

1 relationship in this scenario, the Internet
2 pharmacy situation?

3 A. That's one of the concerns,
4 yes.

5 Q. What was the other concern?
6 I'm sorry if I missed it.

7 A. That the pharmacies were
8 filling prescriptions for patients that they
9 knew nothing about, for doctors that weren't
10 within the geographic area, all for the same
11 drug.

12 Q. Okay. And this Internet
13 pharmacy issue, as you called it, was
14 concerning to DEA?

15 A. It was concerning to me, yes.

16 Q. In fact, by 2005, were Internet
17 pharmacies overwhelming DEA and exhausting
18 its resources as -- in your experience during
19 that time period?

20 MR. BENNETT: Objection.

21 Scope.

22 You may answer in your personal
23 experience and not on behalf of DEA.

24 THE WITNESS: There were a
25 significant number of investigations,

1 and the investigations are lengthy.

2 QUESTIONS BY MS. MCCLURE:

3 Q. So is that, yes, that the
4 resources needing to be devoted to the
5 Internet pharmacy issue were becoming a
6 problem or a concern?

7 A. A concern.

8 Q. A concern.

9 So you, together with
10 Mr. Wright, developed presentations for
11 distributors, correct?

12 A. That's correct.

13 Q. Was it basically the same
14 presentation given multiple times, or did the
15 presentation itself change?

16 A. It was the same basic
17 presentation with some unique information
18 about sales of each specific wholesaler that
19 we were talking with.

20 Q. And before you gave -- or held
21 the first distributor briefing, had you
22 gotten your PowerPoint approved by DEA?

23 MR. BENNETT: Objection.

24 Scope.

25 You are not authorized to

1 disclose the internal deliberative
2 process or any advice you received
3 from counsel.

4 You may answer the last
5 question yes or no only, whether there
6 was formal approval of DEA of the
7 final PowerPoint.

8 THE WITNESS: Yes, there was.

9 QUESTIONS BY MS. MCCLURE:

10 Q. And did you give this
11 presentation to individual distributors or
12 distributors as a whole?

13 How did it work?

14 A. Individual distributors.

15 Q. And how would you communicate
16 to the distributors that there was a new
17 initiative starting?

18 How did you communicate?

19 A. Called them and asked them to
20 come to headquarters to discuss it.

21 (Mapes Exhibit 7 marked for
22 identification.)

23 QUESTIONS BY MS. MCCLURE:

24 Q. I'm going to mark a document
25 Exhibit 7.

1 And for the record,

2 US-DEA-00000147 through 164?

3 A. Okay. I've reviewed it.

4 Q. Okay. The first page of this
5 document that ends in 147, what is this?

6 A. This is a memo that I signed to
7 William Walker, who was the deputy assistant
8 administration in diversion, about a meeting
9 that was held on August 10th with Steve Mays
10 of the AmerisourceBergen Drug Company.

11 Q. And this memo was authored by
12 you, right?

13 That's your signature?

14 A. Yeah, it was actually authored
15 by Kyle Wright, and I signed it.

16 Q. Okay. But you signed it after
17 reviewing it, I assume?

18 A. Yes.

19 Q. Right?

20 A. Yes.

21 Q. And you wouldn't have signed it
22 unless it was a complete and accurate
23 description of the meeting you had had?

24 MR. BENNETT: Objection. Form.

25

1 QUESTIONS BY MS. MCCLURE:

2 Q. Let me strike that.

3 Is this a complete and accurate
4 description of the meeting that you had with
5 Steve Mays?

6 A. As I remember it, yes.

7 Q. And then the second document
8 that begins 149 and ends at 162, what is that
9 document?

10 A. That is a copy of the
11 PowerPoint presentation that was used in the
12 meeting.

13 Q. So this is DEA's PowerPoint
14 presentation, correct?

15 A. Yes.

16 Q. In other words, it's not a
17 presentation AmerisourceBergen brought; it's
18 a DEA-authored presentation, correct?

19 A. Yes.

20 Q. The presentation that you
21 previously testified you had approved as part
22 of the distributor briefings, right?

23 A. Yes.

24 Q. And then the last document,
25 which is 163 to 164, what is that?

1 A. Those are some questions that
2 we provided to AmerisourceBergen that could
3 be asked to help them in their
4 decision-making process about whether or not
5 to ship controlled substances to a specific
6 pharmacy.

7 Q. To Internet pharmacies?

8 A. In this case we were discussing
9 Internet pharmacies, yes.

10 Q. That was the purpose of the
11 meeting you had with AmerisourceBergen on
12 August 10, 2005, correct?

13 A. Yes, it was.

14 Q. To discuss Amerisource -- I
15 mean to discuss Internet pharmacies?

16 A. Yes.

17 Q. And that's what it says -- and
18 if we flip back to the first page of Mapes 7,
19 the purpose of the meeting was to address the
20 illegal domestic Internet pharmacy problem
21 and their source of supply.

22 That's at the bot -- first
23 paragraph?

24 A. Yes.

25 Q. And the memo is called "The

1 Internet Presentation," right?

2 A. It is.

3 Q. And the title of the document
4 that begins on 149, which is the PowerPoint
5 that you gave, is called "Internet Pharmacy
6 Data," right?

7 A. Yes.

8 Q. And from the memo that you
9 wrote -- I'm sorry, that Kyle Wright wrote
10 and you signed, it looks like you led -- you,
11 Michael Mapes, led this distributor briefing
12 with AmerisourceBergen, this particular one,
13 right?

14 A. That's correct.

15 Q. This was the first distributor
16 briefing?

17 A. It was.

18 Q. Why start with
19 AmerisourceBergen Drug Corporation?

20 A. I don't recall why.

21 Q. Okay. And at the conclusion of
22 the presentation, from your memo, it seems
23 that Mr. Mays had arrived to this meeting
24 with some material for DEA -- I'm sorry,
25 that's not at the end of the memo. That's at

1 the bottom of page 1 of the memo.

2 Do you see that?

3 A. Yes, I do.

4 Q. Do you recall Mr. Mays arriving
5 at this meeting with material to discuss with
6 you?

7 A. No.

8 Q. Do you recall when you set
9 up -- well, first of all, let me back up.

10 Did you personally set up this
11 meeting with Steve Mays?

12 A. I did.

13 Q. Do you recall your conversation
14 with Steve Mays to set up this meeting?

15 A. No.

16 Q. So it appears that Mr. Mays
17 presented a sales profile for a pharmacy.

18 Do you see that?

19 A. Yes, I do.

20 Q. Did you know Mr. Mays before
21 this meeting?

22 A. I had seen him at industry
23 meetings and that kind of thing. Didn't know
24 him well.

25 Q. How would you describe

1 Mr. Mays' demeanor during this meeting?

2 A. I really don't recall.

3 Q. Okay. At the end of the memo
4 on the top of the document Bates-labeled 148,
5 the -- I'm sorry, the third full paragraph,
6 it says, "It was agreed that if E-Commerce
7 operations were to identify a highly
8 suspicious pharmacy to which
9 AmerisourceBergen was the wholesaler, that
10 OC -- ODCO" --

11 That stands for E-Commerce
12 operations, right?

13 A. Yes.

14 Q. -- "would notify
15 AmerisourceBergen via e-mail of the
16 suspicious activity for AmerisourceBergen to
17 review and take the actions the company deems
18 appropriate."

19 Do you recall that portion of
20 the meeting?

21 A. No.

22 Q. Subsequent to this, do you
23 recall reaching out to AmerisourceBergen to
24 notify AmerisourceBergen of any suspicious
25 activity that DEA wanted AmerisourceBergen to

1 review and take appropriate action?

2 MR. BENNETT: Objection.

3 Scope.

4 You're not authorized to
5 disclose information about specific
6 investigations.

7 At this time you can answer
8 this question yes or no only regarding
9 whether you remember having such
10 conversations.

11 THE WITNESS: No, I don't
12 recall any specific conversations.

13 QUESTIONS BY MS. MCCLURE:

14 Q. Was Mr. Mays cooperative during
15 this meeting, to your recollection?

16 MR. BENNETT: Objection. Form.
17 Vague.

18 THE WITNESS: I just don't
19 recall.

20 QUESTIONS BY MS. MCCLURE:

21 Q. Okay. Other than what is
22 outlined in this memo and the presentation,
23 was there anything else discussed with
24 Mr. Mays during this briefing?

25 A. I don't recall.

1 Q. If there was anything else
2 discussed, is it fair to say that your
3 practice would have been to put it in a memo
4 or in the presentation?

5 A. In the memo.

6 Q. Okay. So if there's anything
7 else discussed, it would be in the memo
8 itself?

9 A. Right.

10 (Mapes Exhibit 8 marked for
11 identification.)

12 QUESTIONS BY MS. MCCLURE:

13 Q. Okay. A document marked as 8.
14 Let me know when you've had a
15 chance to review that document.

16 A. Okay. I've reviewed it.

17 Q. Okay. So this is a similar
18 presentation titled "Internet Presentation
19 with McKesson Corp" for the memo on page 1 of
20 this Mapes 8, right?

21 A. Yes, it is.

22 Q. And this is a similar document
23 to what we just reviewed.

24 There's a cover memo followed
25 by a somewhat clearer copy of the

1 presentation, and that's MCKMDL00496859 to
2 875, right?

3 A. Yes.

4 Q. And same -- may not be
5 literally identical, but the same basic
6 presentation you had given to
7 AmerisourceBergen Drug Corporation, correct?

8 A. Yes.

9 Q. And again, for the same
10 purpose, Internet pharmacies?

11 A. Yes.

12 Q. And again, if there had been
13 something additional discussed in your
14 meeting, you would have included it in the
15 cover memo?

16 A. Yes.

17 (Mapes Exhibit 9 marked for
18 identification.)

19 QUESTIONS BY MS. MCCLURE:

20 Q. And Mapes 9, US-DEA-00000352
21 through 366.

22 A. Okay. I've reviewed that.

23 Q. Okay. And that is a similar
24 memo followed by the PowerPoint presentation
25 that you provided to Cardinal Health on the

1 topic of Internet pharmacies on August 22,
2 2005?

3 A. It is.

4 Q. Okay. And again, may not be
5 literally identical, but the same basic
6 presentation you had given to
7 AmerisourceBergen Drug Corporation and
8 McKesson, correct?

9 A. Yes.

10 Q. For the same purpose, Internet
11 pharmacy issues?

12 A. Yes.

13 Q. And again, if there had been
14 something additional discussed in your
15 meeting, you would have included it in your
16 cover memo?

17 A. Yes.

18 Q. And we've gone through
19 AmerisourceBergen Drug Corporation, Cardinal
20 and McKesson.

21 Did you give similar
22 presentation to other registrants during the
23 '05-'06 time frame?

24 A. Yes.

25 Q. Did you personally continue to

1 give distributor briefings in your role as
2 the chief of the regulatory section?

3 A. I don't recall.

4 Q. So at the time, these ones that
5 we've gone through in 2005, you were the
6 chief of the E-Commerce section; is that
7 right?

8 A. Correct.

9 Q. And you don't recall whether
10 you -- when you shifted to the new role as
11 the chief of regulatory section, whether you
12 continued to give these distributor
13 briefings?

14 A. I just don't recall.

15 Q. Do you know whether -- do you
16 know whether the briefings continued into the
17 year 2007, whether you were involved with
18 them or not?

19 A. There were other briefings, but
20 I don't recall exactly the time frame of
21 them.

22 Q. Okay. What is a termination
23 notice in relation to a pharmacy?

24 A. I'm not sure whose terminology
25 that is.

1 Q. Okay. Would sometimes DEA
2 inform registrants that another registrant
3 had stopped shipping controlled substances to
4 a pharmacy?

5 A. That was done for a short
6 period of time, yes.

7 Q. And do you know what short
8 period of time that process was done for?

9 A. No, I don't recall.
10 (Mapes Exhibit 10 marked for
11 identification.)

12 QUESTIONS BY MS. MCCLURE:

13 Q. Okay. I'm going to hand you a
14 document marked 10, which is
15 CAH_MDL_PRIORPROD_DEA07_00857912-R.

16 A. Okay.

17 Q. Is this an example of an
18 instance where DEA would advise wholesalers
19 that distribution of controlled substances
20 had been halted to -- let me rephrase that.
21 Sorry.

22 Is this an example of DEA
23 notifying registrants of an immediate
24 suspension order for certain DEA
25 registrations?

1 A. Yes, it is.

2 Q. Okay. You can put that one
3 aside.

4 (Mapes Exhibit 11 marked for
5 identification.)

6 QUESTIONS BY MS. MCCLURE:

7 Q. And I will mark Mapes 11, which
8 is all -- the same intro to the Bates number,
9 ending in 01106667-R.

10 A. Okay.

11 Q. Is this document that I've
12 marked as Mapes 11 an example of DEA
13 notifying registrants that a certain
14 distributor who's unnamed had cut back on
15 sales of hydrocodone combination products?

16 MR. BENNETT: Objection.

17 Foundation. Vague.

18 QUESTIONS BY MS. MCCLURE:

19 Q. You can answer, if you can.

20 A. It is.

21 Q. And this document is dated
22 January 11, 2006.

23 Does reviewing this document
24 refresh your recollection of the time period
25 during which DEA would advise registrants

1 about pharmacy activity, either terminations
2 or, as in this example, cutbacks took place?

3 A. It's an example of that, yes.

4 Q. And does it refresh your
5 recollection as to the time period?

6 A. Yes.

7 Q. At least in '06?

8 A. Yes.

9 Q. Do you know how long after
10 January 11, 2006, DEA engaged in this
11 practice?

12 A. No, I don't.

13 Q. Do you know why this practice
14 was halted?

15 MR. BENNETT: Objection.

16 Scope.

17 You can answer that question
18 yes or no but may not disclose
19 internal deliberative process or
20 attorney-client privileged
21 communications.

22 THE WITNESS: Yes.

23 QUESTIONS BY MS. MCCLURE:

24 Q. Can you tell me why this
25 practice was halted?

1 A. No.

2 Q. Is that because your counsel --
3 or DEA counsel, Mr. Bennett, has instructed
4 you not to reveal internal deliberative
5 process or attorney-client privileged
6 communications?

7 A. Yes.

8 Q. Okay. Looking back at that
9 exhibit, it looks like it went to an e-mail
10 address called ODC@USDOJ.gov.

11 Do you know what that means?

12 A. No, I don't recall.

13 Q. Is that possibly an internal
14 distribution list that was set up for
15 purposes of communicating with registrants?

16 MR. BENNETT: Objection. Calls
17 for speculation.

18 THE WITNESS: I just don't
19 recall.

20 QUESTIONS BY MS. MCCLURE:

21 Q. Why did DEA send this
22 information that's reflected in Mapes 11 to
23 registrants?

24 MR. BENNETT: Objection.
25 Scope.

1 You're not a 30(b)(6) witness
2 to answer on behalf of DEA. You may
3 answer based on your reason for
4 sending the e-mail while you were
5 there.

6 THE WITNESS: My reason for
7 sending the e-mail was to provide
8 additional information to the
9 wholesalers when they're making a
10 decision about selling controlled
11 substances to a specific registrant.

12 QUESTIONS BY MS. MCCLURE:

13 Q. Because you believed that the
14 additional information would be helpful to
15 wholesalers?

16 A. Yes.

17 Q. Based on your experience, would
18 a distributor have a way to know about
19 another distributor's actions in cutting off
20 or cutting back supply to a pharmacy, other
21 than your e-mail that we just looked at of
22 Mapes 11?

23 MR. BENNETT: Objection.

24 Vague.

25 You can answer.

1 THE WITNESS: They may know
2 about that. If their salespeople were
3 in the pharmacy and talked to the
4 pharmacist, they may know those
5 things.

6 QUESTIONS BY MS. MCCLURE:

7 Q. Okay. Do you recall whether
8 you or others with whom you worked, to the
9 extent you know, sent this kind of
10 information out frequently or whether it was
11 uncommon?

12 MR. BENNETT: Objection.
13 Vague. Compound.

14 THE WITNESS: Uncommon.

15 QUESTIONS BY MS. MCCLURE:

16 Q. In the course of your
17 employment at DEA, you were aware that
18 registrants were shipping orders that had
19 been reported to DEA as suspicious, right?

20 MR. BENNETT: Objection.
21 Scope.

22 This is beyond the scope that
23 this witness has been authorized.

24 You may answer based on your
25 personal recollection.

1 THE WITNESS: After having the
2 distributor briefings with individual
3 wholesalers, I don't recall instances
4 where products that were reported as
5 suspicious were shipped.

6 QUESTIONS BY MS. MCCLURE:

7 Q. Does the Controlled Substances
8 Act say that registrants should not ship
9 suspicious orders?

10 MR. BENNETT: Objection. Form.
11 Calls for a legal conclusion.

12 You can answer based on your
13 personal capacity, not on behalf of
14 DEA.

15 If you know.

16 THE WITNESS: Not specifically,
17 no.

18 QUESTIONS BY MS. MCCLURE:

19 Q. And if an order is unusual in
20 size, frequency or pattern, do you agree that
21 that does not necessarily mean that that
22 order is going to be diverted?

23 MR. BENNETT: Objection.
24 Vague. Objection. Incomplete
25 hypothetical.

1 You can answer it.

2 THE WITNESS: I agree.

3 QUESTIONS BY MS. MCCLURE:

4 Q. And so the fact that an order
5 or a portion of an order is diverted after a
6 distributor ships it, would you agree that
7 that does not make that order that has
8 already been shipped now suspicious, if it
9 was not suspicious at the time it was
10 shipped?

11 MR. BENNETT: Objection.

12 Vague. Objection. Calls for
13 speculation. Legal conclusion.

14 You may answer in your personal
15 capacity but not on behalf of DEA.

16 THE WITNESS: I don't really
17 understand the nuances there.

18 QUESTIONS BY MS. MCCLURE:

19 Q. Okay. If an order is not
20 suspicious and is therefore filled and
21 shipped and later downstream is diverted,
22 that fact of that diversion does not now
23 render the order suspicious; do you agree
24 with that?

25 MR. BENNETT: Objection. Same

1 objections.

2 You can answer in your personal
3 capacity.

4 THE WITNESS: Yes.

5 QUESTIONS BY MS. MCCLURE:

6 Q. Similarly, if an order is
7 regarded as suspicious but is shipped, would
8 you agree that that order is not necessarily,
9 in fact, going to be diverted?

10 MR. BENNETT: Objection. Calls
11 for speculation. Vague. Incomplete
12 hypothetical. Outside the scope.

13 You may answer in your personal
14 capacity but not on behalf of DEA.

15 THE WITNESS: Yes.

16 MS. MCCLURE: It's 1:06. I'm
17 going to suggest we go ahead and take
18 a lunch break. That may allow us to
19 streamline.

20 MR. BENNETT: Okay. That's
21 fine.

22 VIDEOGRAPHER: We're going off
23 record. The time is 1:06.

24 (Off the record at 1:06 p.m.)

25 VIDEOGRAPHER: We're going back

1 on the record. Beginning of Media

2 File Number 6. The time is 2:11.

3 QUESTIONS BY MS. MCCLURE:

4 Q. Good afternoon, Mr. Mapes.

5 You understand you're still

6 under oath?

7 A. I do.

8 Q. Okay. Are you aware that DEA
9 issued an order to show cause and immediate
10 suspension order served on April 24, 2007, to
11 AmerisourceBergen Drug Corporation?

12 MR. BENNETT: You can answer.

13 THE WITNESS: I'm aware that
14 they issued one for a specific
15 distribution center.

16 QUESTIONS BY MS. MCCLURE:

17 Q. For the Orlando distribution
18 center?

19 A. Yes.

20 (Mapes Exhibit 12 marked for
21 identification.)

22 QUESTIONS BY MS. MCCLURE:

23 Q. Go ahead and mark this document
24 as Mapes 12.

25 A. Okay. I've read it.

1 Q. Did you have any involvement in
2 DEA work leading up to the issuance of this
3 document that is Mapes 12?

4 MR. BENNETT: Objection.
5 Scope.

6 You can answer that question
7 yes or no only.

8 THE WITNESS: No, I did not.

9 QUESTIONS BY MS. MCCLURE:

10 Q. Have you seen this document
11 before?

12 A. No, I haven't.

13 Q. But you were aware of its
14 existence prior to me telling you this today?

15 A. Yes.

16 Q. And you're familiar with the
17 concepts of DEA's use of order to show cause
18 and immediate suspension orders?

19 A. I am.

20 Q. And so was the effect of this
21 order to halt AmerisourceBergen Drug
22 Corporation's ability to fill any orders for
23 controlled substances out of the Orlando
24 distribution center?

25 MR. BENNETT: You can answer.

1 You can answer, I'm sorry.

2 THE WITNESS: Yes.

3 (Mapes Exhibit 13 marked for
4 identification.)

5 QUESTIONS BY MS. MCCLURE:

6 Q. Mark a document -- keep both
7 that out and this, if you would.

8 This is 13, which is
9 ABDCMDL00398334, and the prior document,
10 which was Mapes 12 is ABDCMDL00269383.

11 Take a look at that and let me
12 know when you've had a chance to review it.

13 A. I've reviewed it.

14 Q. And have you seen this document
15 before?

16 A. No, I have not.

17 Q. Were you aware of this document
18 prior to today, even if you've not seen the
19 actual document?

20 A. Yes.

21 Q. Okay. So this order of special
22 dispensation is dated April 27, 2007, on the
23 last page, right?

24 A. Yes.

25 Q. And it indicates on the first

1 page that the immediate suspension order,
2 which is Mapes 12, had been served on
3 April 24th, right?

4 A. Yes.

5 Q. So three days after the
6 original immediate suspension order was
7 issued, this order of special dispensation,
8 which is Mapes 13, was signed by DEA,
9 correct?

10 A. Yes.

11 Q. And that order of special
12 dispensation permitted AmerisourceBergen Drug
13 Corporation to fill orders for controlled
14 substances out of the Orlando facility for a
15 specific set of customers, namely hospitals,
16 clinics, the Department of Defense,
17 pharmacies within hospitals, clinics or
18 Department of Defense facilities, and the
19 facilities of PMSI, PharMerica and Kindred
20 Health Care and their subsidiaries, correct?

21 A. Yes.

22 Q. And do you have an
23 understanding as to why this order of special
24 dispensation happened three days after the
25 immediate suspension order?

1 A. No, I wasn't involved in that
2 process.

3 Q. Okay. What involvement did you
4 have in connection with this order to show
5 cause?

6 MR. BENNETT: Objection.
7 Scope.

8 You are not allowed to disclose
9 any nonpublic information regarding
10 enforcement actions taken by DEA or
11 any nonpublic information regarding
12 your investigations or activities at
13 DEA.

14 To the extent that there is
15 publicly disclosed facts about what
16 role you played in any investigation
17 that resulted in these documents, you
18 may answer.

19 MS. MCCLURE: In response to
20 that instruction, I am going to
21 withdraw that question, introduce
22 another document and come back to it.

23 (Mapes Exhibit 14 marked for
24 identification.)
25

1 QUESTIONS BY MS. MCCLURE:

2 Q. This is going to be marked as
3 Mapes 14.

4 MS. MCCLURE: And, James, while
5 Mr. Mapes is reviewing Mapes 14, I
6 will direct your attention to
7 paragraph 6 under Section 3 of the
8 agreement on page 6, which provides
9 "AmerisourceBergen and the DEA may
10 each disclose the existence of this
11 agreement and information about this
12 agreement to the public without
13 restriction."

14 Moreover, Mr. Mapes' Touhy
15 letter permits him to provide
16 information regarding his personal
17 recollection regarding DEA's
18 interpretation and enforcement of and
19 practices related to the CSA and its
20 implementing regulations.

21 So I will just note that and
22 ask you to take a look at those.

23 MR. BENNETT: Okay. I
24 understand your comment about the
25 settlement agreement "the DEA may

1 disclose" doesn't necessarily mean
2 that a former employee has been
3 authorized to disclose that on behalf
4 of DEA.

5 And in addition, I would note
6 that even with the authorization that
7 you're -- that you reference, which
8 was number 8, it does say in number 7
9 his personal recollection of any
10 information publicly disclosed by the
11 United States regarding enforcement
12 actions taken by DEA.

13 And I will also note in A it
14 says he is not authorized to disclose,
15 irrespective of the above
16 authorizations, any information
17 regarding any specific DEA
18 investigations or activities.

19 And so I don't know what your
20 questions are going to be, and to the
21 extent that this agreement has been
22 disclosed and other information has
23 been disclosed, he is authorized to
24 talk about that.

25 To the extent that he may --

1 and I don't know the answer to this,
2 but to the extent that he may have
3 been involved in investigation before
4 these orders were issued and that
5 information has never been made public
6 to your clients or to the public, he
7 is not authorized to disclose what he
8 did as an investigation that led up to
9 this.

10 THE WITNESS: Okay. I reviewed
11 it.

12 QUESTIONS BY MS. MCCLURE:

13 Q. Okay. Let's address one --
14 let's address Mr. Bennett's concern first.

15 Did you have any personal
16 involvement in the investigation that led to
17 the issuance of the -- what we've marked as
18 Mapes 12?

19 MR. BENNETT: You may answer
20 that question yes or no only.

21 QUESTIONS BY MS. MCCLURE:

22 Q. And the question is the time
23 leading up to it, so prior to April 19, 2007.

24 A. Yes.

25 Q. But you said that you did not

1 have any involvement in the order of special
2 dispensation which we've marked as Mapes 13?

3 MR. BENNETT: Objection.

4 Mischaracterizes past testimony.

5 QUESTIONS BY MS. MCCLURE:

6 Q. And if that's not correct,
7 please correct me.

8 A. I had not seen that document
9 prior to today.

10 Q. But you did have involvement in
11 events or discussions that led up to the
12 issuance of the order of special dispensation
13 marked as Mapes 13?

14 A. No.

15 MR. BENNETT: You may -- okay.

16 QUESTIONS BY MS. MCCLURE:

17 Q. Okay. Let me just be -- so no
18 involvement in Mapes 13 leading up to it?

19 A. That's correct.

20 Q. Okay. After DEA issued
21 Mapes 12, the order to show cause, did the
22 DEA work with AmerisourceBergen to evaluate
23 and develop a new suspicious order monitoring
24 program?

25 A. Can you repeat that question,

1 please?

2 Q. After DEA issued what we've
3 marked as Mapes 12, which is the order to
4 show cause and immediate suspension of
5 registration, did the DEA work with
6 AmerisourceBergen to evaluate and develop a
7 new suspicious order monitoring program?

8 MR. BENNETT: Objection.

9 Vague.

10 You can answer it.

11 THE WITNESS: No,
12 AmerisourceBergen created a new
13 program that we reviewed after they
14 created it.

15 QUESTIONS BY MS. MCCLURE:

16 Q. When you say "we reviewed after
17 they created it," was that something that you
18 were personally involved with, that review?

19 A. Yes.

20 Q. So AmerisourceBergen created a
21 new program in response to this order to show
22 cause, and then DEA reviewed that newly
23 designed program.

24 Do I have that correct?

25 A. Yes.

1 Q. And you were involved from DEA?

2 A. Yes.

3 Q. Who else from DEA was involved
4 in the review of AmerisourceBergen's program
5 that was developed in this April, May 2007
6 time period?

7 MR. BENNETT: You can answer.

8 THE WITNESS: I think I need to
9 discuss that with these folks.

10 MR. BENNETT: Can we go off the
11 record?

12 VIDEOGRAPHER: Going off
13 record. The time is 2:29.

14 (Off the record at 2:29 p.m.)

15 VIDEOGRAPHER: Going back on
16 record. Beginning of Media File 7.
17 Time 2:31.

18 MR. BENNETT: Counsel, I've had
19 an opportunity to discuss off the
20 record with the witness, and I have
21 explained to the witness that he is
22 authorized to answer your last
23 question, which was to identify the
24 people at DEA involved in the review.

25 I have indicated to him that he

1 is not authorized to disclose what
2 might have been specifically said that
3 was an internal deliberation or was
4 guidance from General Counsel's
5 office.

6 And with that, he's authorized
7 to answer the last question that you
8 asked.

9 Do you need the last question
10 read back?

11 THE WITNESS: No, I'm good.

12 MS. MCCLURE: Okay.

13 THE WITNESS: I reviewed it,
14 along with Kyle Wright and Larry Cody
15 from the Office of Chief Counsel.

16 QUESTIONS BY MS. MCCLURE:

17 Q. And when you say "I reviewed
18 it," the "it" you're referring to is the
19 changed program that AmerisourceBergen had
20 developed, correct?

21 A. Yes.

22 Q. And after you, Kyle Wright and
23 Larry Cody reviewed that new program is when
24 the document that I've marked as Mapes 14,
25 settlement and release agreement, was

1 executed by DEA and AmerisourceBergen Drug
2 Corporation on June 22, 2007; is that
3 correct?

4 A. Yes, it is.

5 Q. In between April 24, 2007, when
6 the order to show cause was served, and
7 June 22, 2007, when the settlement and
8 release agreement was signed, you worked with
9 AmerisourceBergen personnel who were
10 developing that program, correct?

11 MR. BENNETT: Objection.

12 Vague.

13 THE WITNESS: I reviewed the
14 work product that they created and
15 gave comments, but didn't work
16 directly with them as they were
17 developing it.

18 QUESTIONS BY MS. MCCLURE:

19 Q. And then they would take your
20 comments and incorporate them into the
21 program that they were working on; is that
22 correct?

23 A. Yes.

24 Q. So it was not one time that you
25 reviewed something related to this changed

1 program, but instead you would review it,
2 give comments, they would be incorporated,
3 you would review again.

4 Is that an accurate assessment?

5 MR. BENNETT: Objection.

6 Vague. Compound.

7 THE WITNESS: It was more along
8 the lines of them having a specific
9 question that was a part of the
10 changes.

11 They would call with a specific
12 question, we'd discuss it, and then
13 they would go back and work on it with
14 another specific question, that kind
15 of thing, rather than reviewing an
16 entire document.

17 QUESTIONS BY MS. MCCLURE:

18 Q. Okay. So it was -- pieces of
19 it along the way would be presented to you
20 for review and comment, and then maybe the
21 next day or a few days later they would reach
22 out again with some other related question.

23 Is that a fair assessment of
24 that time period?

25 MR. BENNETT: Objection.

1 Vague.

2 THE WITNESS: Yes.

3 QUESTIONS BY MS. MCCLURE:

4 Q. And do you recall whether that
5 work was primarily in April and May of 2007?

6 A. I don't recall exactly when
7 these things happened, no.

8 Q. Okay. So you've talked about
9 some phone calls that you would have with
10 AmerisourceBergen personnel.

11 Did you also have, you,
12 personally, have in-person meetings that you
13 attended about this changed program?

14 And I'm specifically talking
15 about the time period between April 24th of
16 '07, and the signing of the settlement and
17 release agreement on June 22, 2007.

18 A. There were meetings to discuss
19 the settlement agreement that included
20 discussions about the suspicious order
21 monitoring.

22 Q. Where were those meetings
23 physically?

24 A. I'm not sure. I do recall one
25 that was at the AmerisourceBergen

1 headquarters. I'm not sure if there was
2 others or not.

3 Q. We've talked about DEA
4 personnel who were involved.

5 Who do you recall being
6 involved in the work on this changed program
7 from the AmerisourceBergen Drug Corporation
8 side?

9 A. I don't recall who it was.

10 Q. You don't recall anyone from
11 AmerisourceBergen Drug Corporation that was
12 involved in the development of that changed
13 program over that two months?

14 A. It would be a guess at this
15 point. I just don't recall it.

16 (Mapes Exhibit 15 marked for
17 identification.)

18 QUESTIONS BY MS. MCCLURE:

19 Q. Show you a document that's
20 marked 15. For the record, ABDCMDL00316083.

21 This is a series of e-mails
22 that I'm not intending to ask you specific
23 questions about except to the extent as to
24 whether they refresh your recollection
25 regarding who from AmerisourceBergen Drug

1 Corporation was involved in development of
2 the new program that you worked with.

3 A. Okay. I've reviewed it.

4 Q. And does Exhibit 15 refresh
5 your recollection as to who from
6 AmerisourceBergen was involved with the
7 design of the changed program in the April,
8 May, June 2007 time period?

9 A. Could you repeat the initial
10 question?

11 Q. You mean the question I just
12 asked as to who was involved with the --

13 Who do you recall being
14 involved with the changed program that
15 AmerisourceBergen was working with and that
16 you reviewed in that April, May, June 2007
17 time period from AmerisourceBergen?

18 A. I was thinking the initial
19 question had to do with who was at specific
20 meetings that we had with Amerisource instead
21 of general involvement.

22 Q. Okay. Let's start with general
23 involvement.

24 Who from AmerisourceBergen do
25 you generally recall being involved with the

1 creation of the changed program in April, May
2 and June of 2007?

3 A. The person that I dealt with
4 most on that was Steve Mays.

5 Q. Okay. Anyone else you
6 recollect?

7 A. I can see e-mails related to
8 that from Eric Triveni and others that I
9 don't really recall.

10 Q. So your primary recollection is
11 Steve Mays?

12 A. Yes.

13 Q. And so it sounds like the
14 communications between you and
15 AmerisourceBergen during this time period
16 involved phone calls, e-mails, as we've just
17 seen in Mays 15 {sic}, as well as some
18 in-person meetings; is that correct?

19 A. Yes, it is.

20 Q. But you don't recall the number
21 of in-person meetings that you attended
22 regarding the changed program?

23 A. No, I don't.

24 Q. One feature of the changed
25 program was that AmerisourceBergen would now

1 hold orders flagged by a computer program and
2 investigate them as to whether they were
3 suspicious or not and only ship the orders
4 that AmerisourceBergen determined were not
5 suspicious; is that correct?

6 A. That's my understanding, yes.

7 Q. And is it your understanding
8 that that was a significant change in the
9 industry that was undertaken in 2007?

10 MR. BENNETT: Objection.

11 Vague.

12 You can answer.

13 THE WITNESS: Yes, that was a
14 change.

15 QUESTIONS BY MS. MCCLURE:

16 Q. Do you recall in connection
17 with this review also reviewing
18 AmerisourceBergen's due diligence procedures
19 and files?

20 A. I don't specifically recall
21 that, no.

22 Q. Do you recall working with
23 AmerisourceBergen during this time period on
24 thresholds?

25 A. No, I don't.

1 Q. Do you recall working with
2 AmerisourceBergen on a new customer due
3 diligence questionnaire in this time period?

4 A. No.

5 Q. The settlement agreement, if we
6 turn to Mapes 14, on page 3, in
7 Subsection 2C. Tell me when you're there.

8 A. I'm there.

9 Q. The settlement agreement called
10 for -- or required -- okay. Let me back up.

11 This Section 2 is called
12 "Obligations of DEA," correct?

13 A. It is.

14 Q. And Section C provides that
15 "the DEA shall conduct reviews of the
16 functionality of AmerisourceBergen's
17 diversion compliance program, parentheses,
18 compliance reviews, end parentheses, at up to
19 five distribution centers of
20 AmerisourceBergen."

21 And then it lists them out,
22 correct?

23 A. Yes.

24 Q. Were you involved in the
25 functionality compliance reviews conducted

1 between June 22, 2007, and the August 24,
2 2007 date set forth in this settlement
3 agreement?

4 A. My memory is that I was
5 involved in two of them.

6 Q. So of the five facilities or
7 distribution centers, you attended the
8 functionality compliance reviews at two of
9 them?

10 A. Yes.

11 Q. Do you recall which two?

12 A. Williamston, Michigan, and
13 Columbus, Ohio.

14 Q. And Columbus is not listed
15 there because there was an avenue to just
16 have DEA select two facilities, correct?

17 A. Yes.

18 Q. And so Columbus -- the Columbus
19 distribution center was one that DEA selected
20 for these compliance functionality reviews?

21 A. Yes.

22 Q. Do you recall who attended the
23 compliance functionality reviews at Orlando,
24 Sugar Land and the fifth distribution center
25 that DEA selected?

1 A. I do not.

2 Q. How long were the functionality
3 compliance reviews that you attended in
4 Williamston and Columbus?

5 A. Most of the day at each of
6 them.

7 Q. And what was the purpose that
8 you understood you were fulfilling when you
9 conducted these functionality compliance
10 reviews?

11 A. To determine if the
12 distribution centers were following the new
13 procedures that Amerisource had concerning
14 compliance.

15 Q. What activities do you recall
16 performing in connection with those
17 compliance functionality reviews?

18 MR. BENNETT: Objection.

19 Objection. Scope.

20 To the extent that this would
21 reveal investigative or intelligence
22 gathering and dissemination techniques
23 whose effectiveness would be impaired
24 by disclosing, you may not disclose
25 your activities.

1 To the extent that it does not,
2 you may answer the question.

3 THE WITNESS: Okay. And the
4 answer is, I don't remember
5 specifically what we did at the
6 locations.

7 QUESTIONS BY MS. MCCLURE:

8 Q. Okay. Do you remember who else
9 from DEA -- I understand you don't recall who
10 did the other specific functionality
11 reviews -- scratch that. Back up.

12 Moving along further in that
13 paragraph it says, "DEA shall also review the
14 investigatory files of the customers serviced
15 by the distribution centers subject to the
16 compliance reviews that are maintained by
17 AmerisourceBergen's corporate security and
18 regulatory affairs department in
19 Chesterbrook, Pennsylvania."

20 Do you see that language?

21 A. Yes, I do.

22 Q. Do you recall being involved in
23 the review of the customer files at
24 Chesterbrook?

25 A. No, I don't.

1 Q. Was it your understanding that
2 AmerisourceBergen Drug Corporation's license
3 for the Orlando facility was returned and
4 AmerisourceBergen was permitted to fulfill
5 customer controlled substances orders out of
6 the Orlando facility after the execution of
7 the settlement agreement?

8 A. If by "license" you're
9 referring to the DEA registration, yes.

10 Q. Thank you.

11 And so is it fair to conclude
12 that the compliance functionality reviews
13 confirmed that the distribution centers were,
14 in fact, following the new procedures that
15 AmerisourceBergen had regarding compliance?

16 A. Yes.

17 Q. Okay. You can set those
18 documents aside.

19 After you reviewed the new
20 changed program that AmerisourceBergen had
21 developed, you attended a DEA-sponsored
22 pharmaceutical industry conference in
23 Houston, Texas, in September of 2007.

24 Do you recall that?

25 A. Yes, I do.

1 Q. And that was a DEA diversion
2 control division-sponsored conference,
3 correct?

4 A. It was.

5 Q. And you invited Chris Zimmerman
6 to present with you at this conference,
7 right?

8 A. Someone did, yes.

9 Q. It was not you personally?

10 A. No.

11 Q. Did you have an understanding
12 that Chris Zimmerman was asked to present at
13 this conference because you and DEA thought
14 that AmerisourceBergen's new system, the
15 changed system, was appropriate and would be
16 good to share with others in the industry?

17 MR. BENNETT: Objection.

18 Scope.

19 You are not a 30(b)(6) witness
20 authorized to testify on behalf of
21 what DEA thought. You may answer with
22 respect to what you thought personally
23 while you were at DEA.

24 THE WITNESS: Yes, that was my
25 understanding of why he was asked to

1 be part of that.

2 QUESTIONS BY MS. MCCLURE:

3 Q. And so I wasn't there, but it
4 sounds like you and Mr. Zimmerman were both
5 up on stage together presenting ABDC's
6 changed program to industry at a DEA
7 conference.

8 Do I have that correct?

9 A. Yes.

10 (Mapes Exhibit 16 marked for
11 identification.)

12 QUESTIONS BY MS. MCCLURE:

13 Q. Show you a document marked 16.

14 Now, Mr. Mapes, you are, of
15 course, free to review the entire document.
16 The section that I will be asking you about
17 is on the second page under a header called
18 "Suspicious Orders."

19 A. I've reviewed it.

20 Q. In the second paragraph under
21 Suspicious Orders, it says, "Mr. Zimmerman
22 stressed the importance of knowing your
23 customer and providing due diligence
24 investigation on all new retail and wholesale
25 accounts with the exception of retail chain

1 pharmacies."

2 Do you see that language there?

3 A. I do.

4 Q. Can you explain the exception
5 for retail chain pharmacies?

6 A. No, I didn't discuss that
7 particular exception with him, so I don't
8 know why he included that.

9 Q. Did you review Mr. Zimmerman's
10 PowerPoint prior to co-presenting with him at
11 this DEA-sponsored industry conference?

12 A. I'm not sure he had a
13 PowerPoint.

14 (Mapes Exhibit 17 marked for
15 identification.)

16 QUESTIONS BY MS. MCCLURE:

17 Q. Show you a document that is
18 marked Mapes 17.

19 A. I've reviewed this.

20 Q. So does this refresh your
21 recollection that Chris Zimmerman had a
22 PowerPoint that he presented at the
23 September 11, 2007 industry conference?

24 A. No, I still don't remember the
25 presentation details.

1 Q. Okay. I'm not asking if you
2 remember the presentation details. I'm just
3 asking if you recall that Chris Zimmerman
4 stood on stage with you and made a
5 presentation and that it had a PowerPoint
6 attached in connection with it.

7 A. We were both --

8 MR. BENNETT: Objection.

9 Compound.

10 You can answer.

11 THE WITNESS: We were both on
12 stage for a presentation, but I don't
13 remember the PowerPoint.

14 QUESTIONS BY MS. MCCLURE:

15 Q. Okay. Was there anyone else
16 from DEA who presented on this changed
17 AmerisourceBergen program along with
18 Mr. Zimmerman, or was it only you?

19 A. It was just Mr. Zimmerman and
20 myself.

21 Q. Do you recall referring to this
22 changed program as the new industry standard?

23 A. No, I don't recall that.

24 Q. Do you believe that -- was it
25 your understanding that it was expected by

1 DEA, to your understanding, to serve as a new
2 standard?

3 MR. BENNETT: Objection.

4 Scope.

5 You're not authorized as a
6 30(b)(6) witness to speak on behalf of
7 DEA. You may answer based on your
8 personal understanding at the time.

9 THE WITNESS: It's my
10 understanding that the
11 AmerisourceBergen system was an
12 example of a system that contained the
13 type of information that we were
14 looking for.

15 QUESTIONS BY MS. MCCLURE:

16 Q. And was compliant with the
17 Controlled Substances Act?

18 A. Yes.

19 Q. And was being carried out in
20 connection with the program that you had
21 reviewed based on your personal, on-site
22 reviews of those distribution centers?

23 A. Yes.

24 Q. If you turn to page 9 of
25 whatever this PowerPoint exhibit is --

1 MR. BENNETT: Mapes 17.

2 MS. MCCLURE: Thank you. Yes,
3 Mapes 17.

4 QUESTIONS BY MS. MCCLURE:

5 Q. -- which has little Bates
6 numbers on it that end in 1786.

7 It says, "Historically,
8 controlled substance" -- I'm looking at the
9 second and third bullet -- "slash, listed
10 chemical order monitoring has been based on a
11 ship and report process."

12 And the next bullet, "ABC's OMP
13 process is now based on identify, capture,
14 investigate and report suspicious orders, all
15 prior to shipment."

16 Do you see that language?

17 A. Yes, I do.

18 Q. And was it your understanding
19 that this was one of the new features of the
20 changed program that AmerisourceBergen had
21 developed?

22 A. Yes.

23 Q. And this was new not just to
24 AmerisourceBergen but to the wholesale
25 industry?

1 MR. BENNETT: Objection.

2 Vague. Foundation.

3 QUESTIONS BY MS. MCCLURE:

4 Q. Distributor industry.

5 MS. MCCLURE: He can answer the
6 question, right? He was waiting --

7 MR. BENNETT: Oh, yeah.

8 So, objection. Vague.

9 Objection. Foundation.

10 You may answer.

11 THE WITNESS: Yes, this was a
12 change for the wholesale industry.

13 QUESTIONS BY MS. MCCLURE:

14 Q. Mr. Mapes, after you retired
15 from DEA in 2007, you began consulting, as we
16 discussed much earlier in today's deposition?

17 A. Yes.

18 Q. And one of those companies that
19 you performed some consulting work for was
20 AmerisourceBergen Drug Corporation, correct?

21 A. That's correct.

22 Q. When did you first start
23 consulting for AmerisourceBergen Drug
24 Corporation?

25 A. In early 2008.

1 Q. And are you still consulting
2 for them?

3 A. No, I'm not.

4 Q. When did you stop consulting
5 for ABDC?

6 A. Around 2014, 2015.

7 Q. And why was that?

8 A. Because I was spending a lot of
9 time with the pharmacy that I was working
10 with and didn't have time to do both
11 adequately.

12 Q. And the work you performed for
13 ABDC, did that include advising on compliance
14 with DEA regulations and policies?

15 A. It did.

16 Q. Did that include discussing
17 issues that might come up about DEA's
18 interpretation of the regulations?

19 A. Yes.

20 Q. And did it include actual
21 on-site visits to pharmacies to assist with
22 due diligence, whether it's new customer or
23 ongoing customer due diligence?

24 A. It did.

25 Q. Did you also -- sorry, strike

1 that.

2 Do you recall actually visiting
3 pharmacies on behalf of ABDC?

4 A. Yes.

5 Q. Do you recall how often?

6 A. Generally it would be two or
7 three times a year for a week, but seeing
8 several pharmacies in that week's time in a
9 part of the country.

10 Q. What kind of activities would
11 you perform at the pharmacy?

12 A. Looking at the pharmacies,
13 seeing what kind of customers they had, what
14 kind of drugs they were selling, the
15 relationship between the pharmacy and the
16 physicians, discussing issues with the
17 pharmacist.

18 Q. Did anyone from ABDC accompany
19 you on these visits to pharmacies?

20 A. Yes, every time.

21 Q. And do you know whether ABDC
22 was also performing other on-site visits at
23 pharmacies that you were not personally
24 involved with?

25 A. Yes, they were.

1 Q. Did you also perform audits of
2 AmerisourceBergen Drug Corporation's
3 suspicious order monitoring program?

4 A. Yes, I did.

5 Q. How many times did you audit
6 the order monitoring program?

7 A. Annually for five or six years.

8 Q. And do you recall concluding
9 that ABDC's suspicious order monitoring
10 program for those audits that you conducted
11 was in compliance with the Controlled
12 Substances Act?

13 A. That's not the review that I
14 was conducting.

15 Q. Tell me about the review that
16 you were conducting.

17 A. I was looking at it to
18 determine if it was in compliance with the
19 ABC policies and procedures.

20 Q. Okay. And those ABC policies
21 and procedures were the policies and
22 procedures that were developed in connection
23 with the changed program in 2007, correct?

24 A. In conjunction with that and
25 changes that were made subsequent to that.

1 Q. Okay. So it would have been
2 the policies and procedures that were enacted
3 that you would have reviewed back in 2007
4 during your time at DEA, as well as any
5 updates or improvements that had been made to
6 them subsequent?

7 A. Yes.

8 Q. And did you determine that ABDC
9 was in compliance with its policies and
10 procedures for these annual audits?

11 A. There were generally issues to
12 discuss, improvements to be made, but
13 generally in compliance, yes.

14 Q. Going back to excessive
15 purchase reports.

16 DEA's acceptance of excessive
17 purchase reports changed at some point,
18 correct?

19 MR. BENNETT: Objection.

20 Scope.

21 You're not authorized to speak
22 on behalf of DEA. You may speak on
23 your personal knowledge of what you
24 observed while working at DEA.

25 THE WITNESS: The nature of the

1 reports that I was involved with that
2 were accepted did change, yes.

3 QUESTIONS BY MS. MCCLURE:

4 Q. And what was the change?

5 A. It was change from a report
6 that was called an excessive purchase report
7 after the fact to a report that was of
8 specific suspicious orders before they were
9 shipped.

10 Q. And that's the change that
11 we've talked about that AmerisourceBergen had
12 in the April, May, June 2007 time period that
13 you reviewed, correct?

14 A. Yes.

15 Q. Were you aware of any industry
16 participants making that change prior to that
17 program that you reviewed in April, May and
18 June of 2007?

19 A. I don't recall the exact dates
20 when other companies were making the changes,
21 but it was a change that happened routinely
22 after we had the Distributor Initiative
23 meeting with companies.

24 Q. And was this -- do you know if
25 this was viewed by industry, based on your

1 knowledge, as a significant change or a minor
2 one?

3 A. I don't know how they viewed
4 it.

5 Q. No one ever said anything to
6 you about that?

7 A. No.

8 Q. Was there any rulemaking put
9 into effect regarding this change?
10 Do you know what I mean by
11 rulemaking?

12 A. Yeah. Notice and comment
13 rulemaking, no, there wasn't.

14 MS. MCCLURE: So we know who
15 put us on hold, and it's Napoli.

16 Hunter. I recall Hunter.

17 So I think we're going to need
18 to hang this up.

19 So anyone who's on the phone
20 who can hear us, we're going to --

21 So I think we need -- so we're
22 going to go off the record.

23 VIDEOGRAPHER: Okay. Going off
24 record. The time is 3:13.

25 (Off the record at 3:13 p.m.)

1 VIDEOGRAPHER: We're going back
2 on the record. Beginning of Media
3 File 8. The time is 3:26.

4 MS. MCCLURE: So thank you,
5 Mr. Mapes. I'm going to at this point
6 turn the defense questioning over to
7 Ms. Wicht on behalf of Cardinal. I
8 appreciate you, again, being here
9 today. And subject to my redirect
10 anticipated for tomorrow, I will turn
11 over questioning.

12 EXAMINATION

13 QUESTIONS BY MS. WICHT:

14 Q. Good afternoon, Mr. Mapes.

15 A. Good afternoon.

16 Q. As Shannon just said, I'm
17 Jennifer Wicht, and I represent Cardinal
18 Health.

19 And you -- as you indicated
20 before, you and I have met previously on one
21 occasion, correct?

22 A. Correct.

23 Q. Okay. I have just basically
24 some follow-up questions. I'm going to come
25 back to some areas that you spoke about

1 already with Ms. McClure generally and just
2 ask a few more questions on them.

3 So what I will do generally at
4 the beginning is try to just orient you about
5 the subject that I'm going to back to, so
6 I'll refer to the testimony that you gave
7 earlier today. But certainly if I, in doing
8 that, I say something that's incorrect and is
9 not what you said earlier today, I ask you to
10 please correct me when I do that.

11 Okay?

12 A. Okay.

13 Q. Thank you.

14 Okay. So earlier today you
15 testified that during your tenure at the DEA
16 you would have periodic conversations with
17 registrants about their suspicious order
18 monitoring systems, correct?

19 A. Yes.

20 Q. And I think you said that from
21 time to time you would speak with people and
22 they would ask you for advice or input about
23 some particular feature of their suspicious
24 order monitoring system.

25 Do I have that correct?

1 A. Yes.

2 Q. Okay. And when you had those
3 conversations with registrants, did you
4 attempt to provide them with guidance about
5 their systems?

6 A. More than guidance about their
7 system. Just answering the specific question
8 that they had.

9 Q. Okay. You were --

10 MR. BENNETT: I'm not sure the
11 realtime is rolling. At least our
12 screen isn't working. I don't know if
13 others are having the same problem.

14 QUESTIONS BY MS. WICHT:

15 Q. Okay. Thank you. I had to
16 look back and see the answer that you had
17 given because I got distracted there.

18 So you were answering questions
19 about -- from registrants about their
20 suspicious order monitoring systems; is that
21 fair?

22 A. Yes.

23 Q. And when you had those
24 conversations where you would answer
25 questions, were you attempting to help

1 registrants meet their regulatory
2 obligations?

3 A. Yes.

4 Q. And when you had those
5 conversations with registrants, were you
6 honest in the advice that you provided to
7 them about their suspicious order monitoring
8 systems?

9 A. Yes.

10 Q. And did you believe that
11 registrants could rely on the information
12 that you provided in those conversations that
13 you had with them about their suspicious
14 order monitoring systems?

15 A. Yes.

16 Q. And were you aware -- strike
17 that.

18 At the point in time in your
19 tenure at DEA when you were supervising other
20 diversion investigators, were you aware of
21 whether those individuals were having
22 conversations with registrants about their
23 suspicious order monitoring systems of a
24 similar nature to what you've described?

25 MR. BENNETT: Objection.

1 Vague.

2 THE WITNESS: Not necessarily,
3 no.

4 QUESTIONS BY MS. WICHT:

5 Q. Do you know -- you don't know
6 one way or another whether they were or they
7 were not having those conversations?

8 A. That's correct.

9 Q. Okay. You were Kyle Wright's
10 supervisor for a period of time at DEA,
11 correct?

12 A. Yes.

13 Q. Do you have any knowledge or
14 recollection as to whether Mr. Wright
15 specifically had conversations with
16 registrants where he provided -- where he
17 answered questions about suspicious order
18 monitoring systems?

19 A. No, I don't.

20 Q. Okay. Would you expect that if
21 a representative of DEA was having a
22 conversation with a registrant to answer
23 their questions about suspicious order
24 monitoring systems, that the DEA employee
25 would be honest in their conversations with

1 the registrant?

2 A. Yeah, I would expect so.

3 Q. And would you expect that the
4 registrant would be able to rely on the
5 information that was provided by the DEA
6 employee in those conversations?

7 A. Yes.

8 Q. Okay. I'm going to change
9 topics a little bit here.

10 Another thing that you
11 described in your testimony earlier today was
12 a change in DEA's expectation of how
13 suspicious order reporting should be done.

14 Do you recall that?

15 MR. BENNETT: Objection.

16 Mischaracterizes testimony. This
17 witness did not speak for DEA's
18 expectation.

19 QUESTIONS BY MS. WICHT:

20 Q. I'll rephrase the question in
21 light of the objection.

22 Earlier in your testimony
23 today, you described a change in your
24 expectation or understanding of how
25 wholesalers would conduct suspicious order

1 monitoring and reporting, correct?

2 A. Yes.

3 Q. And that was -- you were just
4 recently testifying about that in connection
5 with the presentation that you did with ABDC
6 at the diversion conference in the fall
7 of 2007, correct?

8 A. Yes.

9 Q. Okay. And I think you said,
10 but please correct me if I'm wrong, that you
11 were aware that the expectation -- or you
12 were -- excuse me, strike that. Let me start
13 again.

14 You were aware that the system
15 that ABDC was presenting at the conference
16 represented a change in how wholesalers were
17 conducting suspicious order monitoring and
18 reporting; is that correct?

19 A. It is.

20 Q. Okay. And when -- but there
21 was no change in the regulation, correct?

22 A. That's correct.

23 Q. So is it fair to say that the
24 change was in what DEA -- how DEA was
25 expecting wholesalers to comply with the

1 regulation?

2 MR. BENNETT: Objection.

3 Scope.

4 You're not authorized to speak
5 on behalf of DEA. You may speak upon
6 your personal knowledge of what was
7 happening.

8 THE WITNESS: Yes, I did expect
9 that wholesalers would report
10 suspicious orders differently than
11 they had prior to the meetings and
12 that conference.

13 QUESTIONS BY MS. WICHT:

14 Q. Okay. So when you -- when your
15 expectations changed about how wholesalers
16 would report suspicious orders, did you
17 expect that wholesalers would be able to
18 change their systems instantaneously, or did
19 you expect that it would take some time for
20 them to implement the change to the systems?

21 A. My expectation is that it would
22 take some time. Not a -- not a year, not six
23 months, but some time for them to change.

24 Q. Because they were required
25 to -- they were being asked to prepare and

1 establish effectively a new suspicious order
2 monitoring system, correct?

3 A. Yes.

4 Q. Okay. I want to come back to
5 talking about the presentation that you made
6 with ABDC in the fall of 2007, and I want to
7 direct your attention back to Exhibit 17, if
8 you still have that in front of you.

9 A. Yes, I do.

10 Q. Sorry, thank you.

11 So if you would -- if you
12 would -- and this was a -- I believe you
13 testified earlier that the presentation was
14 made by Mr. Zimmerman of ABDC, correct?

15 A. Yes, it was.

16 Q. And you were on the stage with
17 him at the time that he presented?

18 A. Yes.

19 Q. And if you would turn to Slide
20 Number 7 in the deck, which has the Bates
21 number ending 1784?

22 A. Yes.

23 Q. And that's a slide that's
24 titled "New Customer Due Diligence," correct?

25 A. It is.

1 Q. And do you see that on the
2 slide deck it says, "Retail chain pharmacies
3 are exempted from the due diligence
4 investigations completed on new retail and
5 wholesale accounts"?

6 A. It does.

7 Q. Do you recall, when this
8 presentation was delivered, whether anyone
9 from DEA stated -- stood up and told the
10 group that DEA didn't agree with that
11 exemption?

12 A. I don't recall if they did or
13 didn't.

14 (Mapes Exhibit 18 marked for
15 identification.)

16 QUESTIONS BY MS. WICHT:

17 Q. I've handed you what's been
18 marked as Exhibit 18, if you want to take a
19 moment and look at that.

20 And just for the record, this
21 is a document that's Bates-stamped
22 HDS_MDL_00135664 through 65.

23 MR. LANIER: Do you have a copy
24 for me, Shannon?

25 MS. WICHT: I'm not Shannon,

1 but I can get you one.

2 MR. LANIER: Oh, I'm sorry, I
3 don't have my glasses on.

4 Thank you. Sorry, Jennifer.

5 MS. WICHT: No problem.

6 THE WITNESS: Okay.

7 QUESTIONS BY MS. WICHT:

8 Q. Have you ever seen this
9 document before, Mr. Mapes?

10 A. No, I have not.

11 Q. Okay. Do you see at the top
12 that it's titled as a "Summary of the DEA
13 HDMA Meeting on Suspicious Orders"?

14 A. Yes.

15 Q. And are you familiar with HDMA?

16 A. Yes.

17 Q. And what is HDMA?

18 A. It's an industry association,
19 the Healthcare Distribution Management
20 Association.

21 Q. And do you see that this
22 recites a meeting date of September 7, 2007,
23 and it lists several DEA attendees, including
24 you?

25 A. Yes.

1 Q. Do you recall meeting with HDMA
2 on the subject of suspicious orders in
3 approximately this time frame?

4 A. No.

5 Q. Okay. If you could turn your
6 attention to the second page of the document,
7 please.

8 A. (Witness complies.)

9 Q. And there's a first sort of
10 full bullet that appears on that page, and it
11 says, "DEA also does not want to see --
12 receive suspicious order reports that merely
13 reflect volumes that went over a threshold.
14 They wanted reports that are, quote, true,
15 close quote, suspicious orders."

16 Do you see that?

17 A. Yes.

18 Q. Do you recall ever
19 communicating that to HDMA?

20 A. No, because I really don't
21 recall the meeting.

22 Q. Okay. Do you recall -- leaving
23 aside whether it was at this particular
24 meeting, which I understand that you can't
25 recall, do you recall ever communicating that

1 point that's recited here, that DEA only
2 wanted to receive suspicious order reports
3 of, quote, true suspicious orders to
4 registrants?

5 A. I recall discussing that, but I
6 don't recall who it was with or when, that
7 kind of thing.

8 Q. Okay. Fair enough.

9 And what does that mean, to say
10 that DEA -- well, to your understanding, what
11 did that mean when you communicated that DEA
12 wanted to receive reports that were true
13 suspicious orders, not merely volumes that
14 went over a threshold?

15 A. That we are looking for reports
16 that the wholesalers had reviewed, not just
17 with a raw number of drugs that were ordered
18 but reviewed it and determined that it was
19 suspicious.

20 Q. So I think earlier you
21 described suspicious order reporting as
22 requiring some element of subjective
23 judgment; is that right?

24 A. Yes.

25 Q. So this point that DEA wanted

1 reports that are true suspicious orders, is
2 that conveying that DEA wanted to receive
3 reports only after the wholesaler had applied
4 that subjective judgment?

5 MR. BENNETT: Objection.

6 Scope.

7 You're not authorized to speak
8 on what DEA wanted.

9 You may speak on what you
10 personally meant when you communicated
11 that point to registrants.

12 THE WITNESS: Now I don't
13 remember the question.

14 QUESTIONS BY MS. WICHT:

15 Q. That's what I was just about to
16 say.

17 So the question was: When you
18 were communicating to registrants that DEA
19 wanted to receive true suspicious order
20 reports, not merely volumes that went over a
21 threshold, were you conveying that you wanted
22 to receive reports only after the wholesaler
23 had applied their subjective judgment to
24 determine whether the order was truly
25 suspicious?

1 A. Yes, that's what I was...

2 Q. Okay. If someone asserted that
3 90 percent of all orders that were shipped
4 after September of 2007 should have been
5 reported to DEA as suspicious, would that be
6 consistent with your expectations as you've
7 described them today?

8 A. If they said 90 percent of
9 orders shipped by wholesalers, no, I wouldn't
10 think that was a number that was close to
11 those that should be suspicious.

12 Q. I'm going to switch gears again
13 here for a moment and just talk -- a couple
14 of questions about excessive purchase
15 reports.

16 I think you mentioned earlier
17 today that different registrants may have
18 provided excessive purchase reports in
19 different forms; is that right?

20 A. That's correct.

21 Q. And sometimes different
22 registrants may have called the reports by
23 different names; is that right?

24 A. Yes.

25 Q. Do you have any recollection

1 about whether Cardinal Health referred to
2 those reports as ingredient limit reports?

3 A. I don't recall.

4 Q. Don't recall one way or the
5 other?

6 A. Right.

7 Q. Fair enough.

8 You testified earlier today
9 about cyclic audits performed by DEA
10 investigators of wholesalers' distribution
11 centers, correct?

12 A. Yes.

13 Q. I just have a couple of
14 follow-up questions about that.

15 At the conclusion of a cyclic
16 audit, is it correct that the DEA
17 investigator's report would not be provided
18 to the registrant?

19 A. Yes, that's correct.

20 Q. So is it correct that a
21 registrant who went through a cyclic audit
22 and had no discrepancies found, the
23 registrant would not have a DEA document
24 reflecting that fact? Is that correct?

25 A. Unless the registrant requested

1 it through FOI or something like that.

2 Q. So your understanding that
3 registrants could receive audit reports
4 through the FOIA process?

5 A. Yes.

6 MS. WICHT: I don't have any
7 more questions this afternoon, so I'm
8 going to turn it over to the next
9 person.

10 Thank you very much, Mr. Mapes.

11 THE WITNESS: Okay.

12 VIDEOGRAPHER: Going off the
13 record. The time is 3:48.

14 (Off the record at 3:48 p.m.)

15 VIDEOGRAPHER: We're going back
16 on record. Beginning of Media File 9.
17 The time is 3:50.

18 EXAMINATION

19 QUESTIONS BY MR. EPPICH:

20 Q. Good afternoon, Mr. Mapes. My
21 name is Chris Eppich. I represent McKesson
22 in this litigation.

23 A. Good afternoon.

24 Q. I just have a few questions for
25 you to follow up on the questions of my

1 colleagues this morning and this afternoon.

2 It's true that the DEA
3 registers every pharmacy, distributor and
4 manufacturer that handles controlled
5 substances, correct?

6 A. Yes.

7 Q. And each pharmacy, distributor
8 and manufacturer must submit an application
9 for controlled substances to DEA?

10 A. Yes.

11 Q. DEA evaluates each application?

12 MR. BENNETT: Objection.

13 Scope.

14 You can answer, if you know.

15 THE WITNESS: They evaluate
16 them in different ways depending on
17 the category of the registrant. A
18 manufacturer is much more of an
19 evaluation than a retail pharmacy.

20 QUESTIONS BY MR. EPPICH:

21 Q. What is the evaluation of a
22 manufacturer?

23 MR. BENNETT: Objection.

24 Scope.

25 THE WITNESS: It's an on-site

1 review of their recordkeeping,
2 security, quotas, what they're going
3 to manufacture, all the -- you know,
4 everything from A through Z at the
5 manufacturer.

6 QUESTIONS BY MR. EPPICH:

7 Q. Will you describe the
8 evaluation of a potential distributor
9 registrant?

10 MR. BENNETT: Objection.

11 Scope.

12 THE WITNESS: It's a review, an
13 on-site review, at the location to
14 determine if they have the proper
15 security, recordkeeping and other such
16 things to become a wholesaler.

17 QUESTIONS BY MR. EPPICH:

18 Q. And will you describe the
19 evaluation process for a potential pharmacy
20 registrant?

21 MR. BENNETT: Objection.

22 Scope.

23 THE WITNESS: It's basically a
24 clerical review to be sure that they
25 have the appropriate state license.

1 QUESTIONS BY MR. EPPICH:

2 Q. Is there an on-site inspection
3 or review of a potential pharmacy registrant?

4 MR. LANIER: Object to these
5 questions. The time frame is not put
6 into them.

7 MR. BENNETT: I object to
8 scope.

9 QUESTIONS BY MR. EPPICH:

10 Q. While you were at DEA, sir.

11 A. It changed while I was at DEA.
12 For the first several years there was no
13 on-site review of pharmacies, but after some
14 point in time in the mid-2005-ish time, there
15 were some offices that were performing
16 on-site reviews of pharmacies.

17 Q. Do you know why that changed?

18 MR. BENNETT: Objection.

19 Scope.

20 You're not authorized to
21 disclose the internal deliberative
22 process of the DEA.

23 To the extent that you can
24 answer this question based on your
25 personal knowledge without disclosing

1 internal deliberations, you may
2 answer.

3 THE WITNESS: So I don't really
4 know why some divisions did that and
5 others didn't.

6 QUESTIONS BY MR. EPPICH:

7 Q. If I could ask you to turn to
8 Exhibit 3.

9 A. I've got it.

10 Q. Look at Section 1301.74(a).
11 Are you familiar with
12 Section 1301.74(a), sir?

13 A. Yes.

14 Q. Section 1301.74(a) says,
15 "Before distributing a controlled substance
16 to any person who the registrant does not
17 know to be registered to possess the
18 controlled substance, the registrant shall
19 make a good faith inquiry either with the
20 administration or with the appropriate state
21 controlled substances registration agency, if
22 any, to determine that the person is
23 registered to possess the controlled
24 substance."

25 Do you see that, sir?

1 A. I do.

2 Q. So Section 1301.74(a) requires
3 a registrant to make a good faith inquiry to
4 determine that a customer is registered to
5 possess controlled substances; is that
6 correct?

7 A. It is.

8 Q. Section 1301.74(a) requires a
9 registrant to then check its customer's DEA
10 registration before distributing controlled
11 substances to the customer, correct?

12 A. It requires they check it at
13 some point in time, not necessarily every
14 time before they distribute.

15 Q. Section 1301.74(a) imposes no
16 other requirement on distributors to perform
17 due diligence on its customers, does it?

18 A. It does not.

19 Q. And DEA conducts diligence on
20 the applicants so the distributors can rely
21 on the DEA registrations when complying with
22 1301.74(a)?

23 MR. BENNETT: Objection.

24 Scope. Objection. Vague. Objection.

25 Calls for speculation.

1 And this witness is not a
2 30(b)(6) witness, so he's not
3 answering on behalf of DEA.

4 To the extent you have an
5 opinion in your personal capacity, you
6 may answer.

7 THE WITNESS: Okay. If you
8 could restate the question for me.

9 QUESTIONS BY MR. EPPICH:

10 Q. I'll strike the question.

11 Earlier today you testified
12 about how the Office of Diversion Control is
13 funded.

14 Do you remember that testimony?

15 A. Yes.

16 Q. And you testified that the
17 Office of Diversion Control is funded through
18 registration fees; is that correct?

19 A. Yes.

20 Q. The Office of Diversion Control
21 is also funded through any fines levied
22 against registrants, correct?

23 A. No.

24 Q. Is the only source of funding
25 for the Office of Diversion Control

1 registration fees?

2 A. The majority is registration
3 fees. There are also a few positions that
4 are from appropriated funds, but very few.

5 Q. Earlier today you testified
6 about the emergence of Internet pharmacies in
7 the early 2000s.

8 Do you recall that testimony?

9 A. Yes, I do.

10 Q. Internet pharmacies represented
11 a significant shift in pharmaceutical
12 diversion, correct?

13 MR. BENNETT: Objection.

14 Vague.

15 You can answer.

16 THE WITNESS: They did
17 represent a shift.

18 QUESTIONS BY MR. EPPICH:

19 Q. There were concerns that DEA's
20 anti-diversion group was understaffed to
21 address the Internet pharmacy issue?

22 A. I don't recall those concerns,
23 no.

24 Q. DEA decided that one way to
25 help combat the Internet pharmacies would be

1 to establish this Internet Distributor
2 Initiative, correct?

3 Excuse me, the Internet -- let
4 me strike that.

5 One way that -- and DEA decided
6 that one way to combat the Internet pharmacy
7 issue would be to establish the Distributor
8 Initiative, correct?

9 MR. BENNETT: You can answer.

10 THE WITNESS: Yes.

11 QUESTIONS BY MR. EPPICH:

12 Q. And these Distributor
13 Initiative meetings were meant to educate
14 distributors about Internet pharmacies?

15 A. Yes.

16 Q. And during the Distributor
17 Initiative meetings, you introduced
18 additional diligence, guidance and
19 instructions to distributors to confirm that
20 a distributor is not servicing a rogue
21 Internet pharmacy, correct?

22 MR. BENNETT: Objection.

23 Vague.

24 THE WITNESS: To help them
25 understand what to look at to

1 determine if a customer is a rogue
2 Internet pharmacy.

3 QUESTIONS BY MR. EPPICH:

4 Q. The objective of this
5 additional diligence that you were requesting
6 out of distributors was for the distributors
7 to be able to identify those rogue Internet
8 pharmacy customers of theirs, correct?

9 A. Yes.

10 Q. You were not intending the
11 additional diligence to require distributors
12 to investigate the inner workings of every
13 independent pharmacy across America that they
14 may service, correct?

15 MR. BENNETT: Objection.

16 Vague. Objection. Scope.

17 You may speak on your personal
18 capacity but not on behalf of DEA in
19 response to this question.

20 THE WITNESS: I was expecting
21 that over time they would use the same
22 procedures for all the pharmacies that
23 they were dealing with to be certain
24 that there wasn't a problem that they
25 wouldn't see without the extra due

1 diligence.

2 QUESTIONS BY MR. EPPICH:

3 Q. And the problem that they were
4 to be looking for was whether or not they
5 were an Internet pharmacy?

6 A. An Internet pharmacy or any
7 pharmacy that was selling drugs for other
8 than legitimate medical purpose.

9 Q. Such as a pill mill, correct?

10 A. Yes.

11 Q. Now, during the distributor
12 briefings, you told distributors that you
13 were not concerned with large retail chain
14 pharmacies at the time, correct?

15 A. No.

16 Q. That's not correct?

17 A. I don't believe so.

18 Q. Do you recall instructing
19 distributors at the distributor briefings to
20 conduct due diligence on retail chain
21 pharmacies?

22 A. I don't recall that we made a
23 distinction between retail chain pharmacies
24 and independent pharmacies.

25 Q. In asking the distributors to

1 conduct this additional diligence, you
2 understood that distributors did not have
3 access to all of the distribution and sales
4 data from each of their pharmacy customers,
5 correct?

6 A. Yes.

7 Q. And you also understood the
8 distributors would not be able to identify
9 all of the bad actors within the supply chain
10 with this additional diligence, correct?

11 MR. BENNETT: Objection.

12 Vague.

13 THE WITNESS: I didn't expect
14 that they could immediately identify
15 everyone, no.

16 QUESTIONS BY MR. EPPICH:

17 Q. DEA -- or let me strike that.

18 It wasn't your intention that
19 distributors became deputized agents to the
20 DEA, was it?

21 MR. BENNETT: Objection.

22 Vague. Argumentative.

23 THE WITNESS: No.

24 QUESTIONS BY MR. EPPICH:

25 Q. I would like to return to the

1 2007 presentation that you provided to
2 industry with ABDC in September of 2007. I
3 believe it's marked as Exhibit 17.

4 So the primary purpose, or a
5 primary purpose --

6 MR. BENNETT: Counsel, I'm
7 sorry, I just want to make sure I have
8 the right exhibit.

9 You said 17, which I believe
10 was Amerisource -- represented to be
11 AmerisourceBergen's presentation, not
12 Mr. Mapes' presentation. I think he
13 said he'd never seen it.

14 I just want to make sure since
15 your question said the one "you"
16 presented at the conference.

17 MR. EPPICH: Thank you. Thank
18 you, Mr. Bennett. Let me strike that
19 question.

20 MR. BENNETT: Okay.

21 QUESTIONS BY MR. EPPICH:

22 Q. I'd just like to direct you to
23 Exhibit 17.

24 Now, Mr. Mapes, you were
25 present for the presentation by ABDC on

1 September 11, 2007; is that correct?

2 A. Yes.

3 Q. And you asked ABDC to present
4 this information to the industry at this
5 conference, correct?

6 MR. BENNETT: Objection.

7 Mischaracterizes prior testimony.

8 THE WITNESS: They were asked
9 to present it. I didn't personally
10 ask them, but someone within DEA did.

11 QUESTIONS BY MR. EPPICH:

12 Q. Thank you for that
13 clarification.

14 And someone from the DEA asked
15 ABDC to provide this presentation to educate
16 the other distributors in the industry on the
17 new standards for suspicious order monitoring
18 programs; is that correct?

19 A. That's correct.

20 Q. I'd like you to turn to page 9
21 of Exhibit 17.

22 And earlier you looked at the
23 third bullet on page 9 that reads, "ABC's OMP
24 process is now based on identify, capture,
25 investigate and report suspicious orders all

1 prior to shipment."

2 Do you remember that testimony?

3 A. Yes.

4 Q. Do you agree that a
5 distributor's program that identified,
6 captured or blocked, investigated and
7 reported suspicious orders prior to shipment
8 would be in compliance with the Controlled
9 Substances Act and its regulations?

10 A. It could be, depending on what
11 their criteria for identifying suspicious
12 orders were.

13 Q. And if that criteria were
14 similar to the criteria presented in
15 Exhibit 17, then such a program would be in
16 compliance with the Controlled Substances Act
17 and its regulations, correct?

18 MR. BENNETT: Objection.

19 Incomplete hypothetical. Vague.

20 THE WITNESS: I believe it
21 could be, yes.

22 QUESTIONS BY MR. EPPICH:

23 Q. Earlier today you testified
24 about -- let me strike that.

25 Sir, would you agree with me

1 that there is an opioid crisis?

2 A. Yes.

3 Q. Would you agree that there are
4 a variety of factors that contribute to the
5 opioid crisis?

6 A. Yes.

7 Q. Illegal heroin from cartels
8 contributes to the opioid crisis?

9 MR. BENNETT: Objection.

10 Vague.

11 THE WITNESS: I would be
12 guessing at this point because I
13 haven't currently kept up with the
14 intelligence on those kind of issues.

15 QUESTIONS BY MR. EPPICH:

16 Q. Well, in your time at the DEA,
17 was illegal heroin from cartels contributing
18 to an opioid crisis?

19 MR. BENNETT: Objection.

20 Foundation. Objection. Scope.

21 You're not authorized to
22 disclose information from specific DEA
23 investigations, activities or
24 intelligence that has not been
25 publicly disseminated.

1 To the extent that you can
2 answer this question without
3 disclosing nonpublic DEA information,
4 you can answer.

5 THE WITNESS: I believe
6 generally the opioid crisis started
7 after I left DEA. There was heroin,
8 the source of which I don't know, but
9 there was heroin available, illicit.

10 QUESTIONS BY MR. EPPICH:

11 Q. When do you believe the opioid
12 crisis started?

13 A. I don't know.

14 Q. Would you agree with me that
15 diversion can occur in many different ways?

16 A. Yes.

17 Q. For example, opioids can be
18 stolen from a delivery truck; that's
19 diversion, correct?

20 A. Yes.

21 Q. Someone could go into their
22 grandmother's cabinet and take their
23 grandmother's opioids that she was prescribed
24 for a legitimate purpose; that would be
25 diversion?

1 A. Yes.

2 Q. Someone could take opioids from
3 a friend who was prescribed the opioids for
4 legitimate reasons; that would be diversion,
5 wouldn't it?

6 A. Yes.

7 Q. Distributors have nothing to do
8 with opioids that are diverted when the
9 opioids are stolen from friends or family
10 members, do they?

11 A. No, they don't.

12 Q. The vast majority of diversion
13 occurs once opioids leave the closed system
14 of distribution; would you agree with that?

15 A. I don't know that to be true or
16 not.

17 Q. Would you agree that
18 distributors cannot control what happens to
19 pills diverted outside the closed -- let me
20 strike that.

21 You would agree that
22 distributors cannot control what happens to
23 pills once those pills are delivered to their
24 pharmacy customers, correct?

25 MR. BENNETT: Objection. Form.

1 You can answer.

2 THE WITNESS: That's correct.

3 QUESTIONS BY MR. EPPICH:

4 Q. Are you familiar with the term
5 "overprescribing"?

6 A. Yes.

7 Q. What is overprescribing?

8 A. It's when a prescriber
9 prescribes more controlled substances than
10 are necessary or prescribes controlled
11 substances to people that it may not be
12 necessary for.

13 Q. Is overprescribing a form of
14 diversion?

15 A. Yes.

16 Q. Overprescribing is a form of
17 diversion even if the prescriber is
18 well-intentioned and believes there's a
19 legitimate medical purpose for prescribing
20 the amount and dosage that he or she
21 prescribed?

22 MR. BENNETT: Objection. Form.
23 Calls for speculation. Scope.

24 THE WITNESS: It could be.

25

1 QUESTIONS BY MR. EPPICH:

2 Q. But it's not always, is it,
3 sir?

4 A. I don't think so.

5 Q. You'd agree with me the
6 distributors have no insight into determining
7 whether a doctor has overprescribed opioids
8 to her patient?

9 MR. BENNETT: Objection. Form.
10 Calls for speculation. Incomplete
11 hypothetical.

12 THE WITNESS: Generally not.

13 QUESTIONS BY MR. EPPICH:

14 Q. Are you familiar with the term
15 "illegal prescribing"?

16 A. Yes.

17 Q. What is illegal prescribing?

18 A. Prescribing controlled
19 substances for other than a legitimate
20 medical purpose.

21 Q. Is illegal prescribing a form
22 of diversion?

23 A. Yes.

24 Q. You'd agree with me that
25 illegal prescribing contributes to the opioid

1 crisis?

2 A. Yes.

3 Q. Earlier today you testified
4 about meetings that you had with the
5 plaintiffs' counsel in 2018.

6 Do you remember that testimony?

7 A. Yes.

8 Q. I believe you said you had two
9 meetings, one in the summer and one in the
10 fall of 2018, correct?

11 A. Yes.

12 Q. Now, did you -- during those
13 meetings with the plaintiffs' counsel in
14 2018, did you tell plaintiffs' counsel that
15 the DEA had approved the distributors'
16 submission of excessive purchase reports
17 after orders had been shipped?

18 A. I believe that was discussed,
19 yes.

20 Q. Did you tell plaintiffs'
21 counsel during those meetings that in your
22 experience excessive purchase reports
23 complied with the requirements of the
24 Controlled Substances Act and its
25 regulations, at least for your time at DEA

1 between 1977 and the distributor briefings?

2 A. Yes.

3 Q. Did you tell plaintiffs'
4 counsel during these meetings in 2018 that
5 the Controlled Substances Act and its
6 regulations do not include a no shipping
7 requirement?

8 A. I don't believe so.

9 Q. You didn't discuss the no
10 shipping requirement?

11 A. I don't recall that
12 specifically.

13 Q. During these meetings with the
14 plaintiffs' counsel in 2018, did you tell
15 plaintiffs' counsel the distributor briefings
16 focused on Internet pharmacy issues?

17 A. Yes.

18 Q. Did you tell plaintiffs'
19 counsel that the additional diligence you
20 requested of distributors at these
21 distributor briefings was to help identify
22 Internet pharmacies?

23 A. I don't recall specifically
24 that was how it was worded.

25 Q. But something similar?

1 A. Yes.

2 Q. At these meetings with
3 plaintiffs' counsel in 2018, did you tell
4 plaintiffs' counsel that distributors had no
5 access to the ARCOS data submitted by other
6 distributors?

7 A. I don't believe so.

8 Q. Did you discuss ARCOS data with
9 the plaintiffs' counsel in 2018?

10 A. There was a discussion of ARCOS
11 data, what it consists of and what's
12 available.

13 Q. Did you discuss who had access
14 to ARCOS data during your meetings with
15 plaintiffs' counsel?

16 A. I don't recall if we did.

17 Q. After your discussions with the
18 plaintiffs' counsel, the plaintiffs did not
19 contact you to ask you to serve as an expert
20 for plaintiffs in this case, correct?

21 A. That's correct.

22 Q. Do you recall what other topics
23 you discussed with plaintiffs' counsel during
24 these meetings in 2018?

25 A. Not really. It was just a

1 broad range of topics, but I can't come up
2 with any particular one.

3 Q. Do you recall the names of any
4 attorneys present at the meetings with
5 plaintiffs' counsel in 2018?

6 A. No, I don't at this point.

7 Q. If you look to your right, do
8 you see any of the plaintiffs' counsel here
9 today that attended that meeting?

10 A. There's a couple that may have
11 been at the meeting, at one of the meetings,
12 yes.

13 Q. Do you remember any of their --
14 can you point to any of those individuals,
15 sir?

16 MR. FARRELL: We're just
17 waving.

18 THE WITNESS: Yeah, they're
19 just waving.

20 MR. LANIER: None of us were
21 there.

22 THE WITNESS: Yeah, I don't
23 see...

24 QUESTIONS BY MR. EPPICH:

25 Q. Okay. Now, you mentioned that

1 Mr. Rannazzisi contacted you to join
2 plaintiffs' counsel at this meeting?

3 A. That's correct.

4 Q. Do you remember that testimony?

5 Have you had any conversations
6 with Mr. Rannazzisi outside of these two
7 meetings with Mr. Rannazzisi about the opioid
8 crisis?

9 A. Before the meetings, yes.

10 Q. And when were those
11 conversations?

12 A. I don't recall the exact dates
13 or even approximately when they were. We had
14 a couple of phone calls and...

15 Q. Were they just prior to your
16 first meeting in 2018 with the plaintiffs'
17 counsel, or were they some years prior?

18 A. More along the lines of months
19 prior.

20 Q. Do you recall what you
21 discussed with Mr. Rannazzisi during those
22 conversations?

23 A. A little bit about opioids and
24 a lot about people that we knew and where
25 they were and that kind of thing.

1 Q. During your meetings
2 with plaintiff --

3 MR. LANIER: Can I interrupt
4 for just a moment? I apologize.

5 The record on 218, line 16, has
6 me saying, "One of us was there,"
7 Ms. Campbell.

8 It should be "none of us was
9 there," is what I said.

10 Thank you.

11 QUESTIONS BY MR. EPPICH:

12 Q. If there was a question
13 pending, I'll strike it and start over.

14 Mr. Mapes, during the meetings
15 with plaintiffs' counsel in 2018, were there
16 any other former DEA employees present at the
17 meeting?

18 A. Joe Rannazzisi was present at
19 both, but he was the only former DEA employee
20 that was there besides myself.

21 MR. EPPICH: Thank you, sir. I
22 have no further questions at this
23 time, and I'll turn you over to my
24 colleague, Mr. Stephens.

25 VIDEOGRAPHER: Going off

1 record. The time is 4:20.

2 (Off the record at 4:20 p.m.)

3 VIDEOGRAPHER: We're going on
4 the record. Beginning of Media
5 File 10. The time is 4:34.

6 EXAMINATION

7 QUESTIONS BY MR. STEPHENS:

8 Q. Mr. Mapes, good afternoon. My
9 name's Neal Stephens. I'm from the Jones Day
10 law firm, and I represent Walmart.

11 We met earlier today, but you
12 and I have never spoken before?

13 A. That's correct.

14 Q. Okay. I'll also be asking you
15 some questions, not just on Walmart's behalf
16 but also on behalf of retail chain
17 pharmacies. And for your benefit, that will
18 include CVS, Rite Aid, Walgreens and HBC and
19 Giant Eagle.

20 Okay?

21 A. Yes.

22 Q. Okay. All right.

23 And since I'm going last, I've
24 carved out a lot of material out of my
25 outline, but I do have a couple follow-up

1 questions on some of the topics that you've
2 already testified to today.

3 Okay?

4 A. Okay.

5 Q. And the first one is, there was
6 a series of questions from a couple of my
7 colleagues that related to shipping orders
8 that had been flagged as suspicious.

9 Do you recall that line of
10 questions?

11 A. Yes.

12 Q. And you had indicated that at
13 some point you were aware that registrants
14 had a practice of shipping orders that had
15 been reported as suspicious.

16 Do you recall that?

17 A. That had been reported before
18 2005 in excess -- in suspicious or excessive,
19 that they had shipped those.

20 Q. I'm just -- right.

21 So my point is that you were
22 just aware that there had been a practice at
23 some point in time that orders that had been
24 flagged as potentially suspicious had still
25 been shipped. I'm just trying to reorient

1 you --

2 A. Yes.

3 Q. -- to that testimony. Okay?

4 Now, is it fair --

5 MR. BENNETT: Objection.

6 Mischaracterizes his testimony. He
7 said suspicious or excessive, not just
8 suspicious.

9 QUESTIONS BY MR. STEPHENS:

10 Q. Okay. Is it fair to say that
11 you're not aware of any deadline that DEA set
12 that changed this practice related to the
13 shipping of suspicious orders?

14 A. I'm aware that the practice was
15 changed as we had meetings with wholesalers
16 in 2005 and beyond; that then they changed
17 from sending the excessive or suspicious
18 orders after the fact, and they started doing
19 it ahead of the fact and then resolving that
20 suspicion before they shipped.

21 Q. Okay. Mr. Mapes, but are you
22 aware of any deadline that was set, any date
23 certain set by DEA sent out to the
24 registrants, as to what date that practice
25 had to change?

1 MR. BENNETT: Objection. Asked
2 and answered.

3 THE WITNESS: I'm not aware of
4 a specific deadline.

5 QUESTIONS BY MR. STEPHENS:

6 Q. Okay. All right. Another
7 topic that you addressed earlier today in the
8 first session of questioning related to what
9 DEA's expectations were of various
10 registrants about how they designed their SOM
11 system.

12 Do you recall that line of
13 questions?

14 A. Yes.

15 Q. And just to reorient you, it
16 was basically along the lines of your
17 expectation was that a SOMs system for a
18 registrant was not a one-size-fits-all
19 proposition, correct?

20 A. Correct.

21 Q. It would depend on the
22 registrant's business model, right?

23 A. Yes.

24 Q. Okay. And it's a situation
25 where, for example, some distributors supply

1 hospitals and some don't, right?

2 A. That's correct.

3 Q. And some distributors would
4 supply hospice centers, for example, and
5 other registrants don't?

6 A. Correct.

7 Q. Okay. And some distributors
8 might supply independent pharmacies that the
9 distributor does not own, right?

10 A. Yes.

11 Q. But other distributors, like
12 retail chain pharmacies, do not supply
13 independent pharmacies that they do not own,
14 right?

15 A. Correct.

16 Q. Retail chain pharmacies
17 commonly use a self-distribution model where
18 they only distribute through to chain stores
19 that the retail chain pharmacy owns; is that
20 fair?

21 A. Yes.

22 Q. And so, for example, you'd
23 agree that during your tenure at DEA, Walmart
24 distribution centers only distributed
25 controlled substances to Walmart store

1 pharmacies, fair?

2 A. Yeah, that's my understanding.

3 Q. Okay. And for CVS, CVS would
4 have done the same; they would have only
5 supplied through to CVS stores?

6 A. Yes.

7 Q. And Rite Aid would have only
8 distributed through to Rite Aid stores?

9 A. Yes.

10 Q. And Walgreens would have only
11 distributed through to Walgreens stores?

12 A. Yes.

13 Q. And my last example, HBC, Giant
14 Eagle would have only distributed through to
15 HBC, Giant Eagle stores, fair?

16 A. I don't know about that
17 particular retail chain, so I can't really
18 comment.

19 Q. Okay. During your tenure at
20 DEA, did you think that a SOM system for a
21 retail chain pharmacy who only distributes to
22 pharmacies that it owns may be different than
23 a SOM system for a distributor who
24 distributes to pharmacies that it doesn't
25 own?

1 A. Yes.

2 Q. And would you agree that it
3 could be reasonable for a retail chain
4 pharmacy like Walmart to not have to include
5 all of the compliance measures in its SOM
6 systems that might be necessary for a
7 distributor who distributes controlled
8 substances to customers that the distributor
9 does not own?

10 MR. BENNETT: Objection.

11 Scope. Vague. Incomplete
12 hypothetical.

13 You can answer.

14 THE WITNESS: Yes, I agree
15 there could be differences between the
16 systems for those two organizations.

17 QUESTIONS BY MR. STEPHENS:

18 Q. Okay. Would you agree that
19 during your tenure at DEA you expected that
20 each registrant would take reasonable steps
21 to try to avoid shipping to customers who
22 would divert the controlled substances?

23 A. Yes.

24 Q. And would you agree that one
25 key point of the Controlled Substances Act is

1 that you wanted distributors to set up their
2 supply chain so they took reasonable steps to
3 try to avoid supplying controlled substances
4 to customers who may divert them?

5 A. Yes.

6 Q. And is it fair to say that if a
7 distributor did not supply customers who
8 diverted opioids, the distributor was
9 behaving reasonably?

10 MR. BENNETT: Objection.

11 Scope. Incomplete hypothetical.

12 You can answer.

13 THE WITNESS: It would be fair
14 to say, yes, that if no one that they
15 distributed to was diverting drugs,
16 that their systems were appropriate.

17 QUESTIONS BY MR. STEPHENS:

18 Q. Okay. As an example, would you
19 agree that a distributor was acting
20 reasonably if it structured its business so
21 it did not distribute controlled substances
22 to rogue Internet pharmacies and only
23 distributed to retail chain pharmacies who
24 were among the registrants who did not divert
25 controlled substances?

1 MR. BENNETT: Objection.

2 Scope. Incomplete hypothetical.

3 Calls for speculation.

4 THE WITNESS: If they did not
5 distribute to Internet pharmacies and
6 did not distribute to anyone who
7 diverted, my opinion is that
8 they're being reasonable, yes.

9 QUESTIONS BY MR. STEPHENS:

10 Q. As a general matter, during
11 your tenure as a diversion investigator,
12 would you agree that you focused your
13 anti-diversion efforts where you saw
14 diversion occurring?

15 A. Where we saw diversion
16 occurring and where we saw where we could
17 influence that, whether it was at that level
18 or another level.

19 Q. Okay. Would you agree that in
20 the 2005, 2006 time frame, you saw diversion
21 of controlled substances occurring in rogue
22 Internet pharmacies?

23 A. Yes, among other places.

24 Q. Okay. And during that time
25 frame, the 2005, 2006 time frame, rogue

1 Internet pharmacies became a focus for you
2 and other diversion investigators at DEA?

3 A. They did.

4 Q. Would you agree that in the
5 2006 era, rogue Internet pharmacies presented
6 you and your colleagues at DEA with the
7 greatest threat of diversion that was
8 operating within the closed system of
9 distribution that DEA regulates?

10 A. I don't know that they were the
11 greatest threat, because there was still all
12 the other situations with doctors who were
13 overprescribing and pharmacies who were
14 selling without prescriptions and those
15 things. So I can't really quantify which was
16 the biggest threat.

17 Q. Okay. But would you agree,
18 Mr. Mapes, that in this time period, this
19 2005, 2006 time frame, the onset of rogue
20 Internet pharmacies led DEA to institute its
21 Internet Distributor Initiative that you've
22 testified earlier today?

23 A. Yes.

24 Q. And as part of that effort, you
25 met with wholesale distributors to educate

1 them about the issues presented by rogue
2 Internet pharmacies?

3 A. That's correct.

4 Q. Can you recall how many
5 meetings you personally attended?

6 A. No.

7 Q. Can you estimate?
8 Was it more than ten?

9 A. My estimate is 10 or 12.

10 Q. Okay. But it wouldn't have
11 been more than 15?

12 A. I'm not really certain.

13 Q. Okay. How about this: It
14 wouldn't have been more than 20?

15 A. Probably not.

16 Q. Okay. Were there others? Did
17 you have other colleagues at DEA during this
18 time frame that you're aware of who were also
19 meeting with wholesale distributors on this
20 distributor briefing?

21 A. There were others after I
22 retired from DEA who were doing it. I think
23 I was involved in every one of the
24 distributor briefings while I was still
25 there.

1 Q. Okay. And can you refresh me
2 on when these briefings started?

3 Was it 2005?

4 A. Yes.

5 Q. Okay. And you retire in
6 mid-2007?

7 A. October of 2007, yes.

8 Q. You remember that date, right?

9 A. Yes.

10 Q. Okay. After 30 years, you can
11 remember that date, right?

12 Okay. Fair enough.

13 All right. So in between 2005
14 and October of 2007, your recollection is, is
15 that there were about 12 or so Internet
16 distributor briefings that you conducted with
17 wholesale distributors?

18 A. Yes.

19 Q. Okay. And was each of those
20 like a one-on-one meeting between DEA and one
21 wholesale distributor?

22 A. One distributor, several people
23 from the distributor at times, sometimes an
24 individual, and sometimes with counsel,
25 sometimes without.

1 Q. Okay. So my point, Mr. Mapes,
2 is your recollection of the entirety of the
3 number of wholesale distributors who received
4 this briefing during your career at DEA is
5 about 12?

6 A. About that.

7 Q. Okay. How did DEA -- or how
8 did you select which wholesale distributor
9 was going to receive the briefing?

10 A. We started at first with
11 Amerisource, Cardinal and McKesson because
12 they're obviously those with the largest
13 volume, and then we went to lower volume
14 distributors such as HD Smith and others that
15 were maybe regional distributors, not
16 nationwide distributors, that kind of thing.

17 Q. Okay. So you've identified
18 four.

19 Can you recall any of the other
20 eight or so that you met with during your
21 career?

22 A. Not right now, I can't.

23 Q. You did not meet with Walmart
24 to provide an Internet distributor briefing
25 between 2005 and 2007, correct?

1 A. That's correct.

2 Q. Do you agree that during this
3 time frame DEA acknowledged in presentations
4 that it made that no chain pharmacies were
5 rogue pharmacies?

6 MR. BENNETT: You can answer.

7 THE WITNESS: I don't believe
8 that was in DEA presentations.

9 QUESTIONS BY MR. STEPHENS:

10 Q. Okay. Let me see if I can
11 refresh your recollection.

12 A. Okay.

13 (Mapes Exhibit 19 marked for
14 identification.)

15 QUESTIONS BY MR. STEPHENS:

16 Q. So I'm going to show you what's
17 been marked as Deposition Exhibit Number 19.
18 It's a document that is Bates-numbered
19 US-DEA-00002413.

20 And if you look at the very
21 first slide, it says "Internet Pharmacies."
22 It's got Mr. Rannazzisi's name there, and
23 it's a slide deck.

24 Do you see that?

25 A. Yes.

1 Q. And I'd ask you to turn to
2 Slide 50 in the presentation. It's almost
3 all the way at the back, Mr. Mapes.

4 Do you see that?

5 A. I do.

6 Q. And Slide 50 details -- the
7 title is "The Rogue Pharmacy."

8 Do you see that?

9 A. Yes.

10 Q. Do you see the second bullet?

11 A. Yes.

12 Q. What does the second bullet
13 say?

14 A. "No chain pharmacies."

15 Q. Okay. And does this appear to
16 you to be a presentation that DEA provided on
17 the topic of Internet pharmacies?

18 MR. BENNETT: Objection.

19 Foundation.

20 And I also object that the
21 witness did not have a chance to
22 review the entire document or
23 understand the context of the
24 particular slide that you pointed him
25 out to.

1 THE WITNESS: It appears to be
2 a presentation that Mr. Rannazzisi did
3 concerning Internet pharmacies. I
4 don't know when or to which group or
5 anything like that, and I haven't seen
6 this before.

7 QUESTIONS BY MR. STEPHENS:

8 Q. If you look at the -- page 2 or
9 slide 2, you'll see a date at the bottom,
10 March of 2007.

11 Do you see that?

12 A. Yes.

13 Q. Okay. And you were still at
14 DEA in March of 2007?

15 A. Yes.

16 Q. Okay. All right. I'm finished
17 with that exhibit, Mr. Mapes.

18 In enforcing the Controlled
19 Substances Act during your tenure at DEA, did
20 you believe that every registrant was
21 entitled to due process in every diversion
22 investigation that you conducted?

23 MR. BENNETT: You can answer.

24 THE WITNESS: Yes.

25

1 QUESTIONS BY MR. STEPHENS:

2 Q. Why?

3 A. Just part of the system.

4 Q. But what do you mean "part of
5 the system"?

6 A. That if we find something that
7 we think is wrong, that they, either in a
8 response to a letter of admonition or an
9 administrative hearing or any other forum,
10 they provide their take on the situation.

11 Q. Okay. Do you believe that DEA
12 must separately assess the facts as to each
13 individual actor in DEA's closed system of
14 distribution to determine whether a
15 particular registrant has violated the
16 Controlled Substances Act?

17 MR. BENNETT: You can answer.

18 THE WITNESS: Yes, I believe
19 that they need to look at each
20 registrant individually rather than
21 looking at an entire group.

22 QUESTIONS BY MR. STEPHENS:

23 Q. So would you agree that every
24 manufacturer, distributor and retail chain
25 pharmacy is entitled to individualized review

1 of its own conduct before being accused for
2 potential violations of the Controlled
3 Substances Act committed by somebody else?

4 MR. BENNETT: Objection.

5 Vague. Scope.

6 You can answer in your personal
7 capacity.

8 THE WITNESS: Yeah, I believe
9 that they -- they should have that
10 opportunity, yes.

11 QUESTIONS BY MR. STEPHENS:

12 Q. So, for example, would you
13 agree that you should not accuse a retail
14 chain pharmacy of improper distribution where
15 a rogue Internet pharmacy diverts controlled
16 substances and there is no evidence that the
17 retail chain pharmacy distributed the
18 controlled substances to the rogue Internet
19 pharmacy?

20 MR. BENNETT: Objection.

21 Vague. Scope. Incomplete
22 hypothetical.

23 You can answer in your personal
24 capacity.

25 THE WITNESS: Yes, I believe

1 that each should be treated
2 differently based on the facts and
3 circumstances.

4 QUESTIONS BY MR. STEPHENS:

5 Q. So let's go back to another
6 topic that you mentioned briefly this
7 morning. You had mentioned a DEA 6 report.

8 Do you remember talking about
9 that when you were talking about your time in
10 Detroit and Cleveland as diversion
11 investigator?

12 A. Yes.

13 Q. Can you describe what a DEA 6
14 report is?

15 A. A DEA 6 is just a form for
16 reporting investigative information.

17 Q. And one of the purposes of
18 reporting it in a DEA 6 is that information
19 is preserved for other investigators to use
20 on other investigations if the information
21 that you put in there might be relevant to
22 them?

23 MR. BENNETT: Objection.

24 Scope.

25 You're not authorized to

1 disclose law enforcement sensitive
2 information or confidential
3 investigative techniques.

4 You may answer this question
5 yes or no only on whether that would
6 be one of your purposes in doing a
7 DEA 6.

8 THE WITNESS: Yes, it would be.

9 QUESTIONS BY MR. STEPHENS:

10 Q. Okay. You also, in the course
11 and scope of your duties as a diversion
12 investigator over your 30 years at DEA, you
13 had the opportunity to use DEA's NADDIS
14 database, correct?

15 MR. BENNETT: Objection.

16 Scope.

17 You may answer that question
18 yes or no only on whether you used the
19 NADDIS database.

20 THE WITNESS: Yes, I did.

21 QUESTIONS BY MR. STEPHENS:

22 Q. And the NADDIS database stands
23 for Narcotics and Dangerous Drugs Information
24 System?

25 MR. BENNETT: You can answer

1 that question, if you know.

2 THE WITNESS: Yes.

3 QUESTIONS BY MR. STEPHENS:

4 Q. Okay. NADDIS -- at a very
5 general, high level, NADDIS is a database
6 where DEA agents will input information about
7 subjects of investigation, including any
8 contact information or biographical
9 information they might have on that subject?

10 MR. BENNETT: Objection.

11 Scope.

12 You are not authorized to
13 disclose information regarding
14 confidential databases maintained by
15 the DEA or the information contained
16 therein.

17 And so to the extent you can
18 answer without disclosing the
19 confidential information or ways that
20 the database is used, you can answer.

21 Beyond that, you are not
22 authorized to disclose information
23 regarding specific databases that are
24 nonpublic.

25 THE WITNESS: Okay.

1 It's a database where
2 headquarters inputs information from
3 DEA reports of investigation.

4 QUESTIONS BY MR. STEPHENS:

5 Q. Okay. And it's preserved for
6 other agents in other locations to use
7 downstream if there might be something
8 helpful there?

9 MR. BENNETT: Objection.
10 Scope.

11 You are not authorized to
12 disclose confidential law enforcement
13 investigative techniques.

14 You may answer yes or no only
15 as far as whether you used NADDIS for
16 the purpose -- for that purpose.

17 THE WITNESS: Yes, I did.

18 QUESTIONS BY MR. STEPHENS:

19 Q. Okay. DEA diversion
20 investigators also use something called the
21 RICS database; is that accurate?

22 A. I never heard of that.

23 Q. You have not heard of the
24 database called the Registrant Information
25 Consolidation System database?

1 A. I have not.

2 Q. Would you agree that narcotics
3 enforcement, based on your experience, is
4 more effective when federal agencies
5 cooperate with each other on investigations?

6 MR. BENNETT: Objection.
7 Scope.

8 You may answer that with your
9 personal opinion, but you are not
10 speaking on behalf of DEA.

11 THE WITNESS: Yes, my personal
12 opinion is that cooperation with other
13 agencies is important.

14 QUESTIONS BY MR. STEPHENS:

15 Q. And your personal opinion,
16 based on all of your personal experience as a
17 DEA diversion investigator, would be that
18 when both agencies share information with
19 each other, the agencies can make more
20 informed decisions about how to structure
21 their investigations?

22 MR. BENNETT: Objection.
23 Vague. Objection. Scope.

24 You may give your personal
25 opinion, if you understand the

1 question.

2 THE WITNESS: Yes, they can.

3 QUESTIONS BY MR. STEPHENS:

4 Q. And would you agree as a
5 general matter, based on your 30 years of
6 experience at DEA, that the sharing of
7 information between investigative agencies
8 leads to more collaboration among law
9 enforcement, which often leads to more
10 successful investigation and reduces
11 diversion?

12 MR. BENNETT: Same objection.

13 THE WITNESS: I would agree
14 that it leads to more collaboration
15 and effective investigations.

16 QUESTIONS BY MR. STEPHENS:

17 Q. Okay. And would you agree,
18 based on your experience in your cases that
19 you've worked over the years, that diversion
20 can be reduced when DEA chooses to share
21 information with other federal, state and
22 local law enforcement agencies?

23 MR. BENNETT: Objection.

24 Scope.

25 You are not authorized to speak

1 on behalf of DEA.

2 If you have a personal opinion,
3 you may give your personal opinion
4 based on your personal experiences.

5 THE WITNESS: My opinion is
6 that it's hard to quantify diversion
7 and whether or not sharing of
8 information reduces diversion.

9 So it does lead to more
10 investigations, but whether those
11 reduce diversion or not, I'm not
12 certain.

13 QUESTIONS BY MR. STEPHENS:

14 Q. Would you agree that drug
15 traffickers and diverters are the ones who
16 potentially benefit if DEA decides to isolate
17 itself from folks who could help advance
18 DEA's diversion investigations?

19 MR. BENNETT: Objection.

20 Vague. Calls for speculation. Scope.

21 You are not authorized to speak
22 on behalf of DEA.

23 If you have personal
24 information that you can form a
25 personal opinion, you may give your

1 personal opinion.

2 THE WITNESS: I've forgotten
3 the question now.

4 QUESTIONS BY MR. STEPHENS:

5 Q. Sure.

6 Would you agree that drug
7 traffickers and diverters are the ones who
8 potentially benefit if DEA decides to isolate
9 itself from individuals who could help
10 advance DEA's diversion investigations who
11 are outside of DEA?

12 A. If those individuals are other
13 law enforcement agencies, yes.

14 Q. Okay. Would you agree that DEA
15 should be ready, willing and able to share
16 information with any good faith registrant
17 who could help DEA prevent diversion?

18 MR. BENNETT: Objection.

19 Scope. Vague. Incomplete
20 hypothetical. Calls for speculation.

21 You are not authorized to speak
22 on behalf of DEA. If you have
23 personal experiences which will allow
24 you to form a personal opinion, you
25 may give your personal opinion.

1 THE WITNESS: I would agree
2 with that as long as the information
3 sharing is within the bounds of that
4 that's allowed by law and regulation.

5 QUESTIONS BY MR. STEPHENS:

6 Q. Okay. Based on your experience
7 at DEA, as you were trying to make a
8 determination as to whether to bring an
9 action against someone, would you agree that
10 to make the most accurate assessment of the
11 charging decision that was in front of you,
12 that you wanted as much relevant information
13 as possible about the suspect's action in
14 front of you so you can make an accurate,
15 informed decision on what DEA should do?

16 MR. BENNETT: Objection.

17 Vague. Form.

18 You can answer.

19 THE WITNESS: Yes.

20 QUESTIONS BY MR. STEPHENS:

21 Q. If your colleagues down the
22 road at FBI withheld relevant information
23 from you on an investigation so that you only
24 had partial information about your suspect's
25 conduct, would you agree that it would make

1 it harder for you to make an accurate,
2 informed decision about what to do?

3 MR. BENNETT: Objection. Form.
4 Scope. Vague. Calls for speculation.
5 You can answer.

6 THE WITNESS: I never had the
7 situation personally where the FBI
8 withheld information. It could be
9 detrimental if they did.

10 QUESTIONS BY MR. STEPHENS:

11 Q. Okay. And since it could be
12 detrimental, would you agree that the sharing
13 of information between FBI and DEA in the
14 question I just posed to you would reduce the
15 number of potential mistakes a law
16 enforcement agency might make on an important
17 decision in an investigation?

18 MR. BENNETT: Objection. Form.
19 Scope. Vague. Calls for speculation.
20 Incomplete hypothetical.

21 You can answer.

22 THE WITNESS: Yes, I would
23 agree.

24 QUESTIONS BY MR. STEPHENS:

25 Q. Okay. Given your general

1 duties included some leadership positions at
2 DEA and at headquarters, I'd like to ask you
3 some questions about leadership principles
4 that you may have followed during your time
5 at DEA.

6 Okay?

7 A. Okay.

8 Q. All right. So based on your
9 experience as a leader at DEA, would you
10 agree that the success of an organization
11 often depends in part on tactical decisions
12 made by its leader?

13 MR. BENNETT: Objection.

14 Vague.

15 THE WITNESS: Yes.

16 QUESTIONS BY MR. STEPHENS:

17 Q. Do you agree that good leaders
18 hold themselves accountable for the decisions
19 they make?

20 A. Yes.

21 Q. If your goal is to reduce
22 diversion, would you agree that a good leader
23 at DEA should be willing to share information
24 about diversion issues with good faith
25 registrants so the registrants may be able to

1 use that information to help DEA decrease
2 diversion?

3 MR. BENNETT: Objection. Form.
4 Scope. Vague. Incomplete
5 hypothetical. Calls for speculation.
6 You can answer, if you have an
7 opinion.

8 THE WITNESS: Yes, they should,
9 but again within the constraints of
10 what's authorized by law and
11 regulation.

12 QUESTIONS BY MR. STEPHENS:

13 Q. Would you agree that good
14 leaders at DEA also ensure that their
15 personal conduct and the conduct of their
16 team comports to the standards that they
17 expect others to follow?

18 MR. BENNETT: Objection.
19 Vague.

20 THE WITNESS: I don't quite
21 understand the question.

22 If you're saying that the DEA
23 employees comport to the same
24 standards they're of expecting
25 registrants, they're in a different

1 business and doing different things,
2 so...

3 QUESTIONS BY MR. STEPHENS:

4 Q. Well, let me ask it this way.

5 Do you agree that the American
6 public has a right to expect that the leaders
7 of our law enforcement agencies will lead
8 their teams in a fashion that is consistent
9 with the standards that they impose on the
10 folks that they regulate?

11 MR. BENNETT: Objection.

12 Vague. Calls for speculation.

13 THE WITNESS: It seems
14 reasonable, yes.

15 QUESTIONS BY MR. STEPHENS:

16 Q. Okay. Is it fair to say that
17 the American public has a right to expect
18 that when DEA sees diversion happening, DEA
19 will not simply let the diversion continue to
20 happen?

21 MR. BENNETT: Objection.

22 Vague. Incomplete hypothetical.

23 Calls for speculation.

24 THE WITNESS: Yes, but within
25 the bounds of the available resources.

1 QUESTIONS BY MR. STEPHENS:

2 Q. Based on your experience as a
3 leader at DEA, if DEA expects registrants it
4 regulates to take reasonable measures to
5 prevent diversion, is it fair for the
6 American public to expect that DEA will do
7 the same?

8 MR. BENNETT: Objection.

9 Incomplete hypothetical. Vague.
10 Calls for speculation. Scope.

11 You can answer, if you have an
12 opinion.

13 THE WITNESS: I really don't
14 have an opinion on that.

15 QUESTIONS BY MR. STEPHENS:

16 Q. All right. Well, how about
17 this.

18 If DEA has information that a
19 shipment of controlled substances headed to
20 Customer X will be diverted by Customer X, do
21 you think that the American public should be
22 able to rely on DEA to step in and intercept
23 that shipment of controlled substances before
24 those controlled substances reach Customer X?

25 MR. BENNETT: Objection.

1 Scope. Vague. Incomplete
2 hypothetical. Calls for speculation
3 and calls for a legal conclusion.

4 THE WITNESS: I believe the DEA
5 should take some appropriate action,
6 and that should be expected.

7 QUESTIONS BY MR. STEPHENS:

8 Q. Okay. Let me switch gears here
9 a little bit.

10 And what I'd like to do is ask
11 you some questions about some of -- some of
12 the investigative techniques that DEA has
13 that may be different than what a registrant
14 might be able to do as it's setting up its
15 SOM program.

16 Okay?

17 A. Okay.

18 Q. During your tenure as a DEA
19 investigator, were there occasions where you
20 were able to identify a potential diverter
21 based on information that DEA developed as
22 opposed to information that was provided to
23 DEA by a registrant in a suspicious order
24 report?

25 MR. BENNETT: Objection.

1 Scope.

2 You may answer that question
3 yes or no only.

4 THE WITNESS: Yes.

5 QUESTIONS BY MR. STEPHENS:

6 Q. Okay. Would you agree that DEA
7 has unique law enforcement investigative
8 powers that are available to DEA to identify
9 potential diverters that are not available to
10 a registrant like Walmart?

11 MR. BENNETT: Objection.

12 Vague.

13 THE WITNESS: Yes.

14 QUESTIONS BY MR. STEPHENS:

15 Q. Okay. DEA has subpoena power,
16 for example, correct?

17 A. That's correct.

18 Q. Walmart does not have subpoena
19 power to subpoena a doctor, correct?

20 A. Not that I'm aware of.

21 Q. Okay. Now, DEA can issue
22 subpoenas to help investigate potential
23 diversion, right?

24 MR. BENNETT: Objection. Form.

25

1 QUESTIONS BY MR. STEPHENS:

2 Q. Based on your experience, do
3 you agree that DEA can issue a subpoena to
4 help investigate potential diverters?

5 MR. BENNETT: You can answer,
6 if you know.

7 THE WITNESS: Yes.

8 QUESTIONS BY MR. STEPHENS:

9 Q. Okay. And during your time at
10 DEA, DEA collected information in diversion
11 investigation through subpoenas?

12 MR. BENNETT: Objection.
13 Scope.

14 You may answer that question
15 yes or no only.

16 THE WITNESS: Yes.

17 QUESTIONS BY MR. STEPHENS:

18 Q. To your knowledge, did Joe
19 Rannazzisi ever authorize you or anyone else
20 to share information with any registrant the
21 DEA had obtained through subpoenas?

22 MR. BENNETT: Objection.
23 Scope.

24 You may answer that question
25 yes or no only.

1 THE WITNESS: No.

2 QUESTIONS BY MR. STEPHENS:

3 Q. Would you agree that search
4 warrants are a second vehicle that provide
5 DEA an investigative tool that registrants
6 like Walmart do not have?

7 MR. BENNETT: You can answer.

8 THE WITNESS: Yes.

9 QUESTIONS BY MR. STEPHENS:

10 Q. Okay. DEA can apply to a
11 magistrate judge to obtain a search warrant,
12 right?

13 A. Yes.

14 Q. And a search warrant would give
15 DEA the ability to potentially search rogue
16 pain clinics to obtain documents that might
17 advance a diversion investigation the DEA is
18 conducting?

19 A. That's correct.

20 MR. BENNETT: Objection.

21 Objection. Scope.

22 You can answer that yes or no
23 only based on your personal
24 experiences.

25 THE WITNESS: Yes.

1 QUESTIONS BY MR. STEPHENS:

2 Q. Okay. Based on your personal
3 experience, Mr. Mapes, DEA also can obtain
4 what is known as an ISP search warrant, an
5 Internet service provider search warrant,
6 which allows DEA to intercept e-mail
7 communications which would include
8 conversations between a doctor and the
9 doctor's patients that might relate to
10 diversion, true?

11 MR. BENNETT: Objection.

12 Scope.

13 You are authorized to answer
14 whether you know of a document
15 entitled an "ISP search warrant" in
16 your personal experience, yes or no
17 only.

18 THE WITNESS: No.

19 QUESTIONS BY MR. STEPHENS:

20 Q. You've never heard of an ISP
21 search warrant?

22 A. No.

23 Q. Okay. All right.

24 But just on the topic of search
25 warrants generally, we'll go to premises

1 search warrant, which is the first example I
2 gave you where you go to a magistrate, the
3 magistrate authorizes DEA to go to address X
4 and DEA conducts a search there.

5 You're familiar with those,
6 right?

7 A. Yes.

8 Q. Okay. Now, did Joe Rannazzisi
9 ever authorize, to your knowledge, anyone at
10 DEA to disclose to any registrant any
11 information obtained from a search warrant so
12 that that registrant could help DEA in a
13 diversion investigation?

14 MR. BENNETT: Objection.

15 Scope.

16 You may answer that question.

17 THE WITNESS: Not that I'm
18 aware of.

19 MR. BENNETT: Well --

20 QUESTIONS BY MR. STEPHENS:

21 Q. Okay.

22 MR. BENNETT: He's answered
23 your question.

24 I do object to the scope of
25 that. I was going to authorize him to

1 answer that yes or no only.

2 He has said not to his

3 knowledge, so we can move on.

4 QUESTIONS BY MR. STEPHENS:

5 Q. And just to reconfirm, Walmart
6 has no ability to go to a magistrate judge to
7 obtain a search warrant, right?

8 A. That's correct.

9 Q. No registrant can go to a
10 magistrate judge and seek a search warrant,
11 right?

12 A. I wouldn't say that, because
13 DEA is a registrant, so...

14 Q. Okay. Other than law
15 enforcement agencies, no private sector
16 registrant can go to a magistrate and seek a
17 search warrant; is that fair?

18 A. Yes.

19 Q. All right. The use of the
20 grand jury is a third example of an
21 investigative technique that is unique to law
22 enforcement and something that is not
23 available to private sector registrants,
24 fair?

25 MR. BENNETT: Objection.

1 Scope. Objection. Form. Calls for a
2 legal conclusion.

3 You can answer, if you know, in
4 your personal knowledge.

5 THE WITNESS: Yes.

6 MR. BENNETT: I'm sorry, I'm
7 not sure I understand his answer to
8 your question on whether somebody in
9 the private sector can go to the grand
10 jury or not.

11 QUESTIONS BY MR. STEPHENS:

12 Q. Okay. So let me restate it.

13 Based on your experience at
14 DEA, can anyone other than law enforcement
15 use the grand jury as a tool to conduct due
16 diligence on a customer?

17 A. No.

18 Q. Okay. Would you agree that the
19 grand jury is an investigative technique that
20 is available to law enforcement and law
21 enforcement only?

22 MR. BENNETT: Objection.

23 Vague. Objection. Calls for a legal
24 conclusion.

25 You can answer in your personal

1 knowledge, if you know.

2 THE WITNESS: Yes, it is a
3 tool.

4 QUESTIONS BY MR. STEPHENS:

5 Q. Okay. And DEA can subpoena a
6 suspected diverter to the grand jury and ask
7 him questions under the penalty of perjury
8 related to whether that individual has
9 diverted any controlled substances?

10 MR. BENNETT: Objection.
11 Vague. Objection. Calls for a legal
12 conclusion. Objection. Foundation.

13 If you have any personal
14 knowledge whether DEA can subpoena a
15 suspected diverter -- oh, and
16 objection. Scope.

17 You may answer in your personal
18 knowledge.

19 THE WITNESS: My personal
20 opinion is that DEA can serve a
21 subpoena that was issued, but DEA
22 doesn't issue subpoenas.

23 QUESTIONS BY MR. STEPHENS:

24 Q. Okay. The subpoena would be
25 issued by either a federal prosecutor's

1 office, a US Attorney's office, or a state
2 prosecutor's office?

3 A. Yes.

4 Q. A district attorney's office,
5 right?

6 A. Yes.

7 Q. Okay. If DEA and the
8 prosecutors believe that a witness has lied
9 in providing testimony to a grand jury, that
10 individual could be prosecuted for perjury,
11 right?

12 MR. BENNETT: Objection.

13 Incomplete hypothetical. Calls for a
14 legal conclusion. Scope.

15 You can answer based on your
16 personal experience, if you know.

17 THE WITNESS: I haven't had the
18 personal experience of that happening,
19 no.

20 QUESTIONS BY MR. STEPHENS:

21 Q. Okay. Would you agree that
22 being able to compel witnesses to the grand
23 jury and answer questions under the penalty
24 of perjury is a very valuable tool to DEA in
25 building diversion cases?

1 MR. BENNETT: Objection.

2 Vague. Scope. Calls for a legal
3 conclusion.

4 You can answer.

5 THE WITNESS: Yes.

6 QUESTIONS BY MR. STEPHENS:

7 Q. And Walmart cannot compel
8 witnesses to testify in front a grand jury,
9 correct?

10 A. That's correct.

11 Q. And the other companies who
12 you've met today at your deposition, none of
13 them have the ability to compel any witnesses
14 to go to a grand jury; is that fair?

15 A. That's correct.

16 Q. Okay. Would you agree that
17 conducting undercover operations present a
18 fourth example where DEA has unique
19 investigative tools to conduct diversion
20 investigations?

21 MR. BENNETT: Objection.

22 Vague. Objection. Scope.

23 If you have an opinion, you may
24 answer that question yes or no only.

25 THE WITNESS: Yes.

1 QUESTIONS BY MR. STEPHENS:

2 Q. Okay. For example, based on
3 your experience conducting diversion
4 investigations, DEA can use undercover
5 officers to purchase controlled substances
6 from diverting Internet pharmacies and pain
7 clinics?

8 MR. BENNETT: Objection.

9 Scope.

10 You are not authorized to
11 disclose confidential law enforcement
12 investigative or intelligence-
13 gathering and dissemination techniques
14 whose effectiveness would thereby be
15 impaired.

16 To the extent that you can
17 answer the question without disclosing
18 confidential law enforcement
19 investigative techniques, you can
20 answer. Otherwise, you are instructed
21 not to answer.

22 THE WITNESS: Yes, they can.

23 QUESTIONS BY MR. STEPHENS:

24 Q. Okay. The undercover officers
25 in a DEA operation, for example, in a

1 diversion investigation, are allowed to
2 legally tape record the conversations that
3 they have with the operator of the business
4 that's under investigation?

5 MR. BENNETT: Objection.

6 Scope.

7 You are not authorized to
8 disclose confidential law enforcement
9 techniques or how undercover
10 investigations are done. Also, you
11 are not authorized to draw legal
12 conclusions.

13 I'm instructing you not to
14 answer that question.

15 MR. STEPHENS: On what --

16 MR. FARRELL: Sustained.

17 MR. STEPHENS: On what basis?

18 MR. BENNETT: That it's a
19 confidential law enforcement
20 investigative technique on how they do
21 investigations and what evidence they
22 gather.

23 QUESTIONS BY MR. STEPHENS:

24 Q. Are you aware, Mr. Mapes, that
25 there had been literally thousands of

1 investigations that have played out in
2 courtrooms across the United States of
3 America where United States Attorneys have
4 put DEA agents on the stand and have played
5 tapes of undercover operations to convince
6 juries to convict drug traffickers under
7 Title 21?

8 MR. BENNETT: You may answer
9 that question, based on your personal
10 knowledge, yes or no only.

11 THE WITNESS: Yes.

12 QUESTIONS BY MR. STEPHENS:

13 Q. Okay. So then undercover
14 officers can legally tape record
15 conversations that they have with the
16 operators of the businesses that DEA is
17 investigating; is that fair?

18 MR. BENNETT: Objection. Calls
19 for a legal conclusion. Scope.

20 I don't think this witness can
21 draw a legal conclusion in this
22 deposition.

23 You're asking whether he can
24 legally tape. I don't think he's both
25 authorized to do that or qualified to

1 make a conclusion. Plus, I think it's
2 an incomplete hypothetical.

3 So I'm going to instruct him
4 that he's not authorized on behalf of
5 DEA or use any DEA information in
6 answering that question.

7 MR. STEPHENS: Okay. I will
8 move on to conserve time.

9 QUESTIONS BY MR. STEPHENS:

10 Q. Would you agree that Walmart
11 and CVS, Walgreens, Rite Aid, do not have the
12 ability to use law enforcement agents to
13 conduct undercover operations of businesses?

14 MR. BENNETT: Objection.
15 Vague. Incomplete hypothetical.
16 Calls for a legal conclusion.

17 You can answer if you have an
18 opinion.

19 THE WITNESS: No, I'm not
20 really certain about that.

21 QUESTIONS BY MR. STEPHENS:

22 Q. Okay. Are you aware that it
23 might be illegal in certain states for a
24 private actor, private company, to secretly
25 tape record conversations with other people?

1 MR. BENNETT: Objection.

2 Scope.

3 To the extent you have personal
4 information, you can answer that --
5 you can give your personal opinion.

6 Calls for a legal conclusion.

7 THE WITNESS: I don't know
8 which states may have which laws, so I
9 can't really answer that.

10 QUESTIONS BY MR. STEPHENS:

11 Q. So you don't know one way or
12 the other. Okay.

13 To your knowledge, did Joe
14 Rannazzisi ever authorize you or anyone else
15 that you know of at DEA to disclose to
16 registrants who could help DEA in diversion
17 investigations information that DEA had
18 obtained in undercover operations?

19 MR. BENNETT: Objection.

20 Scope.

21 You are not authorized to
22 disclose information regarding
23 specific DEA investigations or
24 activities. You may answer this
25 question yes or no only.

1 THE WITNESS: No.

2 QUESTIONS BY MR. STEPHENS:

3 Q. Okay. As a fifth example of an
4 investigative technique that is unique to DEA
5 and federal law enforcement, would you agree
6 that DEA, in a local US Attorney's Office,
7 has the ability to apply to a judge for an
8 order that would allow DEA to record
9 telephone calls made by the subject of DEA's
10 investigation, a Title 3 wiretap?

11 MR. BENNETT: You can answer
12 that question.

13 THE WITNESS: Yes.

14 QUESTIONS BY MR. STEPHENS:

15 Q. And would you agree that a
16 Title 3 wiretap allows DEA to listen in to
17 every discussion over the target's telephone?

18 MR. BENNETT: Objection.
19 Scope. Calls for a legal conclusion.
20 Incomplete hypothetical.

21 You can answer, if you know.

22 THE WITNESS: Every call except
23 for those that are required to be
24 minimized.

25

1 QUESTIONS BY MR. STEPHENS:

2 Q. Okay. Very good.

3 And that's spelled out in the
4 order that the judge -- the DEA and the
5 US Attorney's Office present to the judge and
6 the judge signs, right?

7 A. Yes.

8 Q. Okay. All right. Another form
9 of electronic surveillance is a room bug.
10 Are you familiar with a room
11 bug?

12 MR. BENNETT: Objection.
13 Scope.

14 He's not authorized to disclose
15 confidential law enforcement
16 investigative or intelligence-
17 gathering techniques, the
18 effectiveness of which would be
19 impaired.

20 You may answer this question
21 yes or no only whether you are
22 familiar with the term "a room bug."

23 THE WITNESS: Yes.

24 QUESTIONS BY MR. STEPHENS:

25 Q. Okay. A room bug is like a

1 Title 3 telephonic intercept. It's a device
2 that's placed in a particular location and it
3 records, right?

4 MR. BENNETT: You can answer
5 that question yes or no only if you
6 know.

7 THE WITNESS: Yes.

8 QUESTIONS BY MR. STEPHENS:

9 Q. Okay. And in comparison to
10 DEA, which has the ability to apply to a
11 judge for these wiretaps and room bugs,
12 Walmart would not have the ability to apply
13 to a judge for a room bug or a wiretap, fair?

14 MR. BENNETT: Objection. Calls
15 for a legal conclusion.

16 You can answer in your personal
17 knowledge, if you know.

18 THE WITNESS: That's correct.

19 QUESTIONS BY MR. STEPHENS:

20 Q. And would you agree that
21 electronic surveillance can be an enormous
22 help to DEA in determining whether a suspect
23 is diverting controlled substances?

24 MR. BENNETT: Objection.
25 Vague. Scope.

1 You can answer in your personal
2 capacity if you have an opinion.

3 THE WITNESS: Yes, it could be.

4 QUESTIONS BY MR. STEPHENS:

5 Q. Okay. And based on your
6 30 years at DEA, are you aware of any
7 situation where Joe Rannazzisi or anyone else
8 who was running the Office of Diversion
9 Control ever authorized you or anyone else at
10 DEA to disclose to a registrant who could
11 help DEA in a diversion investigation the
12 information that DEA had obtained through
13 electronic surveillance?

14 MR. BENNETT: Objection. Form.
15 Scope. Compound.

16 You're not authorized to
17 disclose any information regarding
18 specific DEA investigations or
19 activities.

20 You may answer this question
21 yes or no only, if you understand.

22 THE WITNESS: Could you restate
23 the question?

24 QUESTIONS BY MR. STEPHENS:

25 Q. Sure.

1 Based on your 30 years at DEA,
2 are you aware of any situation where anyone
3 who is running the Office of Diversion
4 Control ever authorized you or anyone else at
5 DEA to disclose to a registrant who could
6 help DEA in a diversion investigation with
7 information that DEA had obtained through
8 electronic surveillance?

9 MR. BENNETT: Same objections
10 and instruction.

11 THE WITNESS: No, I'm not.

12 QUESTIONS BY MR. STEPHENS:

13 Q. All right. Let's talk about
14 number 6, and that will be information from
15 state medical boards or state local law
16 enforcement. Okay?

17 DEA, during your tenure and on
18 investigations you worked, obtained
19 information from state and local law
20 enforcement regarding diversion
21 investigations the DEA was conducting; is
22 that accurate?

23 MR. BENNETT: Objection.

24 Scope.

25 You can answer yes or no only.

1 THE WITNESS: Yes.

2 QUESTIONS BY MR. STEPHENS:

3 Q. Okay. Would you agree that
4 private sector registrants like the companies
5 that you've met here today do not have the
6 ability to obtain information from state and
7 local law enforcement investi -- state and
8 local law enforcement regarding
9 investigations that state and local law
10 enforcement is conducting on suspected
11 diverters?

12 MR. BENNETT: Objection. Form.
13 Incomplete hypothetical. Calls for
14 speculation.

15 You can answer, if you have an
16 opinion.

17 QUESTIONS BY MR. STEPHENS:

18 Q. Let me strike the question and
19 ask a better question.

20 A. Okay.

21 Q. That question wasn't so
22 artfully crafted, Mr. Mapes.

23 Are you aware of any situation
24 during your tenure at DEA where state and
25 local law enforcement shared information with

1 a registrant related to an investigation that
2 state and local law enforcement was doing of
3 a suspected diverter?

4 MR. BENNETT: Objection.

5 Scope.

6 You can answer that question
7 yes or no only.

8 THE WITNESS: Yes.

9 QUESTIONS BY MR. STEPHENS:

10 Q. Okay. Would you agree that DEA
11 can obtain information from state medical
12 boards regarding investigations that the
13 state medical board is conducting?

14 MR. BENNETT: You can answer
15 that question.

16 THE WITNESS: Yes.

17 QUESTIONS BY MR. STEPHENS:

18 Q. Okay. Are you aware of any
19 situation where a state medical board
20 provided information to a non-law enforcement
21 registrant related to investigation --
22 pending investigations that the state medical
23 board was conducting?

24 MR. BENNETT: You can answer
25 that question yes or no only.

1 THE WITNESS: Yes.

2 QUESTIONS BY MR. STEPHENS:

3 Q. Okay. Are you aware of any
4 situation where Mr. Rannazzisi ever
5 authorized you or anyone else at DEA to
6 disclose to a registrant who could help DEA
7 advance its diversion investigation with
8 information that DEA had obtained from state
9 and local law enforcement?

10 MR. BENNETT: Objection.

11 Scope. Vague.

12 You can answer that question
13 yes or no.

14 THE WITNESS: No.

15 QUESTIONS BY MR. STEPHENS:

16 Q. Are you aware of any situation
17 where Mr. Rannazzisi ever authorized you or
18 anyone else at DEA to disclose to a
19 registrant who could help DEA advance its
20 diversion investigation with information that
21 DEA had obtained from a state medical board?

22 MR. BENNETT: Objection.

23 Scope. Vague.

24 You can answer that question
25 yes or no only.

1 THE WITNESS: No.

2 QUESTIONS BY MR. STEPHENS:

3 Q. Are you aware of anyone who was
4 in the position of running the Office of
5 Diversion Control who ever authorized you or
6 anyone else at DEA to disclose to a
7 registrant who could help DEA advance its
8 diversion investigation with information that
9 DEA had obtained from a state medical board?

10 MR. BENNETT: Objection.

11 Scope. Vague.

12 You can answer that question
13 yes or no only.

14 THE WITNESS: No.

15 QUESTIONS BY MR. STEPHENS:

16 Q. Are you aware of anyone who was
17 in the position of running the Office of
18 Diversion Control who had ever authorized you
19 or anyone else at DEA to disclose to a
20 registrant who could help DEA advance its
21 diversion investigation with information the
22 DEA had obtained from state or local law
23 enforcement?

24 MR. BENNETT: Objection.

25 Scope. Vague.

1 You can answer that question
2 yes or no only.

3 THE WITNESS: No.

4 QUESTIONS BY MR. STEPHENS:

5 Q. Did private sector companies
6 such as Walmart or Walgreens or Rite Aid have
7 the ability to access NADDIS information?

8 MR. BENNETT: You can answer
9 that question, if you know.

10 THE WITNESS: No.

11 QUESTIONS BY MR. STEPHENS:

12 Q. Did private sector companies,
13 Walmart, Walgreens, CVS, have the ability to
14 access DEA 6 reporting from DEA's databases?

15 MR. BENNETT: You can answer
16 the question.

17 THE WITNESS: Only through FOI
18 requests or discovery from a case or
19 something like that.

20 QUESTIONS BY MR. STEPHENS:

21 Q. Okay. But DEA will not provide
22 responses, if you know, to FOIA requests
23 related to pending investigations?

24 MR. BENNETT: Objection.

25 Scope. Calls for speculation. Calls

1 for a legal conclusion.

2 You may answer based on your
3 personal experience and personal
4 knowledge while you were at DEA.

5 THE WITNESS: They have not
6 provided that that I'm aware of.

7 QUESTIONS BY MR. STEPHENS:

8 Q. Okay. So information from
9 NADDIS would be a seventh example where DEA
10 agents can use that information, but private
11 sector companies cannot obtain that
12 information related to pending investigations
13 where the registrant might be able to help
14 DEA with its diversion investigation?

15 MR. BENNETT: Objection.

16 Vague. Form.

17 You can answer.

18 THE WITNESS: That's correct.

19 QUESTIONS BY MR. STEPHENS:

20 Q. Okay. So let's talk about
21 ARCOS here briefly.

22 You testified a little bit
23 about ARCOS earlier.

24 Do you recall that?

25 A. Yes.

1 Q. Okay. Now, DEA could analyze
2 ARCOS information from all registrants to
3 develop leads on potential diverters during
4 your tenure at DEA; is that fair?

5 MR. BENNETT: You can answer
6 it.

7 THE WITNESS: Yes, it is.

8 QUESTIONS BY MR. STEPHENS:

9 Q. Okay. And was that information
10 helpful in advancing DEA diversion
11 investigations?

12 MR. BENNETT: Objection.
13 Vague.

14 You can answer.

15 THE WITNESS: Yes, it was.

16 QUESTIONS BY MR. STEPHENS:

17 Q. Okay. During your tenure at
18 DEA, did DEA share ARCOS information it
19 received from one distributor with all other
20 distributors?

21 MR. BENNETT: You can answer
22 that question.

23 THE WITNESS: No.

24 QUESTIONS BY MR. STEPHENS:

25 Q. So did Mr. Rannazzisi, when he

1 ran the Office of Diversion Control, ever
2 authorize you or anyone else, to your
3 knowledge, at DEA to disclose to a registrant
4 who could help advance DEA's investigation of
5 a suspected diverter with information from
6 ARCOS that related to information that had
7 been supplied to DEA from other registrants?

8 MR. BENNETT: Objection.

9 Scope. Vague. Form.

10 You can answer that question
11 yes or no only.

12 THE WITNESS: No.

13 QUESTIONS BY MR. STEPHENS:

14 Q. To your knowledge, did anyone
15 who ran the Office of Diversion Control at
16 DEA during your tenure there ever authorize
17 you or anyone else at DEA to disclose to a
18 registrant who could help advance DEA's
19 investigation of a suspected diverter with
20 information from ARCOS that related to
21 information that had been supplied to DEA
22 from other registrants?

23 MR. BENNETT: Objection. Form.

24 Scope. Vague.

25 You can answer that question

1 yes or no only.

2 THE WITNESS: No.

3 QUESTIONS BY MR. STEPHENS:

4 Q. Okay. Move on to my next
5 topic.

6 You testified a little bit
7 earlier about your background and how you had
8 worked in field divisions and then had gone
9 to headquarters, right?

10 A. Yes.

11 Q. And you also provided some
12 information about how DEA is structured and
13 how certain squads have DEA enforcement
14 agents and other squads have DEA diversion
15 investigators.

16 Do you recall that testimony?

17 A. Yes.

18 MR. BENNETT: Objection.

19 Mischaracterizes testimony.

20 MR. STEPHENS: I don't think
21 so, but...

22 QUESTIONS BY MR. STEPHENS:

23 Q. You also -- during your tenure
24 at DEA, when you were retiring, is it fair
25 that there were about 20 field divisions or

1 so throughout the country at DEA?

2 MR. BENNETT: You can answer.

3 THE WITNESS: Yes.

4 QUESTIONS BY MR. STEPHENS:

5 Q. And each division is run by a
6 special agent in charge?

7 A. It is.

8 Q. And the special agent in charge
9 is known as the SAC, the S-A-C?

10 A. Yes.

11 Q. Okay. And that's the highest
12 level at a field division, right?

13 A. Yes.

14 Q. Okay. And there are a couple
15 other high-level positions, one of which
16 would be the assistant special agent in
17 charge, the ASAC; is that fair?

18 A. Fair.

19 Q. And another high-level position
20 in the field is what they call a RAC, a
21 resident agent in charge, fair?

22 A. Yes.

23 Q. Okay. Now, based on your
24 experience at DEA, how many of -- how many
25 SACs can you identify that came up through

1 the ranks as a diversion investigator?

2 A. None.

3 Q. Zero?

4 A. Yeah.

5 Q. Okay. Based on your career,
6 how many ASACs can you identify that came up
7 through the ranks as a diversion investigator
8 as opposed to a special agent on the
9 enforcement side?

10 A. An ASAC position is a special
11 agent position, the equivalent in diversion
12 is the diversion program manager.

13 Q. Okay. So can you identify any
14 ASAC who came up through the ranks as a
15 diversion investigator during your 30 years
16 at DEA?

17 A. There were a couple who were
18 diversion investigators and then went to
19 become special agents and ended up being
20 ASACs, but they were -- they were agents at
21 that point.

22 Q. Okay. So there were two that
23 you can recall?

24 A. A couple I can recall, yes.

25 Q. Okay. All right. Now,

1 enforcement agents are special agents, right?

2 That's how they're referred to within DEA?

3 A. Yes.

4 Q. And the enforcement agents
5 investigate drug trafficking organizations
6 like the Medellin cartel or the Sinaloa
7 cartel, fair?

8 A. Among their own duties, yes.

9 Q. Okay. Diversion investigators,
10 by contrast, focus on diversion
11 investigations; is that fair?

12 A. Yes.

13 Q. Now, at DEA, special agents can
14 also work diversion investigations, right?

15 A. Yes.

16 Q. There is no rule, there's no
17 law, there's no regulation that says
18 enforcement agents are prohibited from
19 helping diversion investigators work
20 diversion investigations; is that fair?

21 A. That's correct.

22 Q. Do you think that diversion
23 would have been further reduced during your
24 time at DEA if the special agents in charge
25 at the field division level would have made

1 diversion investigations more of a priority?

2 MR. BENNETT: Objection.

3 Scope. Incomplete hypothetical.

4 Calls for speculation.

5 This is not a 30(b)(6) witness,
6 so you are not authorized to answer on
7 behalf of DEA.

8 To the extent that you have a
9 personal opinion in your personal
10 capacity, you may answer the question.

11 THE WITNESS: No, I really
12 don't know if that would have made a
13 difference or not.

14 QUESTIONS BY MR. STEPHENS:

15 Q. Okay. Well, for example, would
16 you expect that supervisors in the field
17 divisions like SACs, ASACs and RACs should be
18 familiar with suspicious activity reports?

19 MR. BENNETT: Objection.

20 Scope. Incomplete hypothetical.

21 Calls for speculation.

22 This is not a 30(b)(6) witness
23 who can speak on behalf of the DEA.

24 To the extent that you have a
25 personal opinion, you may answer in

1 your personal capacity.

2 THE WITNESS: I don't believe
3 the SACs and ASACs would be involved
4 in something at that level and that
5 detail.

6 QUESTIONS BY MR. STEPHENS:

7 Q. Okay. How about US Attorney's
8 Offices, during your 30 years at DEA, do you
9 think that the US Attorney's Offices devoted
10 the level of resources that you wanted to
11 diversion cases as opposed to enforcement
12 cases against drug trafficking organizations?

13 MR. BENNETT: Objection.

14 Scope. Incomplete hypothetical.

15 Calls for speculation.

16 This is not a 30(b)(6) witness
17 who can answer on behalf of DEA or
18 give DEA's position.

19 To the extent that you have a
20 personal opinion, you may give your
21 opinion in your personal capacity.

22 THE WITNESS: Personally, we
23 always had good support from the
24 US Attorney's Offices.

25

1 QUESTIONS BY MR. STEPHENS:

2 Q. Can you name any chief of
3 narcotics for any of the 94 US Attorney's
4 Offices during your tenure at DEA, based on
5 your experience, who prosecuted more
6 diversion investigations than enforcement
7 matters against drug trafficking
8 organizations?

9 MR. BENNETT: Objection. Form.
10 Scope.

11 You can answer.

12 THE WITNESS: I don't know how
13 many enforcement cases they did versus
14 diversion cases, so I really don't
15 know.

16 QUESTIONS BY MR. STEPHENS:

17 Q. Can you name any OCDETF chief,
18 who ran any of the nine OCDETF regions in the
19 United States and the Caribbean during your
20 tenure at DEA, whose OCDETF team prosecuted
21 more diversion investigations compared
22 against enforcement cases brought by special
23 agents against drug trafficking
24 organizations?

25 MR. BENNETT: Objection. Form.

1 Scope.

2 You can answer.

3 THE WITNESS: Again, I don't
4 know the total of the numbers of
5 cases, so I couldn't say.

6 QUESTIONS BY MR. STEPHENS:

7 Q. Okay. Would you agree that
8 within DEA, both diversion investigators and
9 enforcement special agents are investigators
10 within DEA?

11 MR. BENNETT: Objection.

12 Vague.

13 THE WITNESS: Yes.

14 QUESTIONS BY MR. STEPHENS:

15 Q. Okay. Based on your 30 years
16 of experience and what you wanted to
17 accomplish in anti-diversion efforts, what
18 percentage of mix between how many -- what
19 percent of enforcement special agents that
20 were allocated at DEA against what percentage
21 of diversion investigators there were at DEA
22 was the right mix?

23 MR. BENNETT: Objection. Form.

24 Objection. Scope. Objection. Calls
25 for speculation.

1 QUESTIONS BY MR. STEPHENS:

2 Q. Let me re -- fair enough,
3 Counsel. Let me restate it.

4 So during your tenure, 30-year
5 tenure, at DEA working diversion
6 investigations, for DEA to be as effective as
7 possible in its anti-diversion efforts, what
8 percentage of authorized investigator slots
9 should have been allocated to diversion
10 investigators as opposed to special agents?

11 MR. BENNETT: Objection. Form.
12 Objection. Scope.

13 To the extent that you have a
14 personal opinion, you may give it in
15 your personal capacity.

16 But you are not a 30(b)(6)
17 witness, and you are not authorized to
18 speak on behalf of DEA's allocation of
19 resources.

20 THE WITNESS: And I really
21 don't know what that -- allocation
22 would be best.

23 QUESTIONS BY MR. STEPHENS:

24 Q. During your tenure at DEA, did
25 you think that there should have been more

1 diversion investigators in the mix working
2 diversion investigations as opposed to
3 enforcement special agents focused on drug
4 trafficking organizations?

5 MR. BENNETT: Objection.

6 Scope.

7 You can answer in your personal
8 capacity if you have a personal
9 opinion, but you may not speak on
10 behalf of DEA.

11 THE WITNESS: My opinion is no,
12 because we usually had agents to work
13 on the cases with us when necessary.

14 QUESTIONS BY MR. STEPHENS:

15 Q. What percentage of time do you
16 think enforcement special agents, during your
17 tenure at DEA, spent working on diversion
18 matters as opposed to enforcement matters
19 against drug trafficking organizations?

20 MR. BENNETT: Objection.

21 Foundation. Calls for speculation.

22 You can answer, if you know.

23 THE WITNESS: I really don't
24 know what percentage. A small
25 percentage.

1 MR. STEPHENS: Okay. Let me
2 take a quick break and see if we are
3 done for the night.

4 VIDEOGRAPHER: We're going off
5 record. The time is 5:47.

6 (Off the record at 5:47 p.m.)

7 VIDEOGRAPHER: Going back on
8 record. Beginning of Media File 11.
9 The time is 5:48.

10 QUESTIONS BY MR. STEPHENS:

11 Q. Mr. Mapes, thank you. I just
12 have a few more questions for you before we
13 wrap up for the evening.

14 I had asked you some questions
15 earlier on about who you recall meeting with
16 between 2005 and 2007 in those 12 or so
17 distributor briefings that you gave.

18 Do you recall that testimony?

19 A. Yes.

20 Q. Okay. Let me ask a couple of
21 follow-up questions.

22 Did you meet with CVS in a
23 Distributor Initiative meeting between 2005
24 and 2007?

25 A. No.

1 Q. Did you meet with Rite Aid?

2 A. No.

3 Q. Did you meet with Walgreens?

4 A. No.

5 MR. STEPHENS: Okay. Thank
6 you. I have no further questions.

7 I would like to state for the
8 record that we're reserving our full
9 90 minutes for any potential redirect.

10 And with that, I'm done. Thank
11 you.

12 MR. BENNETT: Okay.

13 MS. LEVY: This is Jennifer
14 Levy for the manufacturing defendants.
15 We will decline to ask questions today
16 and reserve any questions we may have
17 until the 90-minute redirect we may do
18 tomorrow.

19 VIDEOGRAPHER: All right. This
20 concludes the deposition for today.
21 Going off the record. The time is
22 5:50.

23 (Off the record at 5:50 p.m.)

24 - - - - -

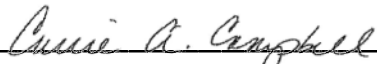
25

CERTIFICATE

I, CARRIE A. CAMPBELL, Registered
Diplomate Reporter, Certified Realtime
Reporter and Certified Shorthand Reporter, do
hereby certify that prior to the commencement
of the examination, Michael Mapes, was duly
sworn by me to testify to the truth, the
whole truth and nothing but the truth.

I DO FURTHER CERTIFY that the
foregoing is a verbatim transcript of the
testimony as taken stenographically by and
before me at the time, place and on the date
hereinbefore set forth, to the best of my
ability.

I DO FURTHER CERTIFY that I am
neither a relative nor employee nor attorney
nor counsel of any of the parties to this
action, and that I am neither a relative nor
employee of such attorney or counsel, and
that I am not financially interested in the
action.


CARRIE A. CAMPBELL,
NCRA Registered Diplomate Reporter
Certified Realtime Reporter
Notary Public
Dated: July 11, 2019

1 INSTRUCTIONS TO WITNESS

2
3 Please read your deposition over
4 carefully and make any necessary corrections.
5 You should state the reason in the
6 appropriate space on the errata sheet for any
7 corrections that are made.

8 After doing so, please sign the
9 errata sheet and date it. You are signing
10 same subject to the changes you have noted on
11 the errata sheet, which will be attached to
12 your deposition.

13 It is imperative that you return
14 the original errata sheet to the deposing
15 attorney within thirty (30) days of receipt
16 of the deposition transcript by you. If you
17 fail to do so, the deposition transcript may
18 be deemed to be accurate and may be used in
19 court.

ACKNOWLEDGMENT OF DEPONENT

I, _____, do
hereby certify that I have read the foregoing
pages and that the same is a correct
transcription of the answers given by me to
the questions therein propounded, except for
the corrections or changes in form or
substance, if any, noted in the attached
Errata Sheet.

Michael Mapes

DATE

Subscribed and sworn to before me this
_____ day of _____, 20 _____.

My commission expires: _____

Notary Public

1			- - - - -
			ERRATA
2			- - - - -
3	PAGE	LINE	CHANGE / REASON
4	_____	_____	_____
5	_____	_____	_____
6	_____	_____	_____
7	_____	_____	_____
8	_____	_____	_____
9	_____	_____	_____
10	_____	_____	_____
11	_____	_____	_____
12	_____	_____	_____
13	_____	_____	_____
14	_____	_____	_____
15	_____	_____	_____
16	_____	_____	_____
17	_____	_____	_____
18	_____	_____	_____
19	_____	_____	_____
20	_____	_____	_____
21	_____	_____	_____
22	_____	_____	_____
23	_____	_____	_____
24	_____	_____	_____
25			

1

- - - - -

LAWYER'S NOTES

2

- - - - -

3

PAGE

LINE

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25